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O'Shea v. High Mark Development Clerk's Record v. 1 Dckt. 37869

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LAW CLERK

IN THE

volume 1 of 9

SUPREME COURT

OF THE

STATE OF IDAHO

THOMAS O'SHEA and ANNE O'SHEA,

trustees of the Thomas and Anne O'Shea trust,

Plaintiff and

Appellants

HIGH MARK DEVELOPMENT, LLC

DALE A. SCHNEIDER, MATTHEW F SMITH, THE CHILDRENS CENTER

Defendant and

Respondents

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Joel E. Tingey, District Judge

C. Timothy Hopkins

P.O. Box 51219, Idaho Falls, ID 83405-1219

Attorney for Appellant

Richard J. Armstrong

500 Eagle Gate Tower 60 East South Temple, SLC, UT 84111

Attorney for Respondent

Filed this day of MAR 21 2011

Clerk

By

Deputy

37869

COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS O'SHEA and ANNE)
DONAHUE O'SHEA, Trustees of the)
Thomas and Anne O'Shea Trust u/d/t)
DATED NOVEMVER 2, 1998;)
GRANDVIEW CREDIT, LLC, a)
California Limited Liability company;)
CALEB FOOTE, an individual,)
KATE LARKIN DONAHUE, an)
individual, JOHN KEVIN DONAHUE,)
an individual, and SAN FRANCISCO)
RESIDENCE CLUB, INC., a California)
Corporation:)

Plaintiff/Appellants,)

vs.)

HIGH MARK DEVELOPMENT, LLC,)
an Idaho limited liability company;)
GORDON ARAVE, individually and as)
Member of High Mark Development, LLC;)
BENJAMIN ARAVE, individually and as)
Member of High Mark Development,)
LLC, and JOHN DOES I-X,)

Defendant/Respondents.)

THOMAS O'SHEA and ANNE)
DONAHUE O'SHEA, Trustees of the)
Thomas and Anne O'Shea Trust u/d/t)
DATED NOVEMVER 2, 1998;)
GRANDVIEW CREDIT, LLC, a)
California Limited Liability company;)
CALEB FOOTE, an individual,)
KATE LARKIN DONAHUE, an)
individual, JOHN KEVIN DONAHUE,)
an individual, and SAN FRANCISCO)
RESIDENCE CLUB, INC., a California)
Corporation:)

Plaintiff/Appellants,)

Case No. CV-2008-4025

Docket No. 37869

Volume 1 of 9

vs.

DALE A. SCHNEIDER, an individual;
MATTHEW F. SMITH, an individual; THE
CHILDREN'S CENTER, INC., an Idaho
Corporation and THE IDAHO CHILDREN'S
CENTER, INC., an Idaho corporation,

Defendants.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE Joel E. Tingey, District Judge.

C. Timothy Hopkins, Esq.
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IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS O'SHEA and ANNE
DONAHUE O'SHEA, Trustees of the
Thomas and Anne O'Shea Trust u/d/t
DATED NOVEMBER 2, 1998;
GRANDVIEW CREDIT, LLC, a
California Limited Liability company;
CALEB FOOTE, an individual,
KATE LARKIN DONAHUE, an
individual, JOHN KEVIN DONAHUE,
an individual, and SAN FRANCISCO
RESIDENCE CLUB, INC., a California
Corporation:

Plaintiff/Appellants,

vs.

HIGH MARK DEVELOPMENT, LLC,
an Idaho limited liability company;
GORDON ARAVE, individually and as
Member of High Mark Development, LLC;
BENJAMIN ARAVE, individually and as
Member of High Mark Development,
LLC, and JOHN DOES I-X,

Defendant/Respondents.

THOMAS O'SHEA and ANNE
DONAHUE O'SHEA, Trustees of the
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DATED NOVEMBER 2, 1998;
GRANDVIEW CREDIT, LLC, a
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CALEB FOOTE, an individual,
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Corporation:

Plaintiff/Appellants,

vs.

DALE A. SCHNEIDER, an individual;
MATTHEW F. SMITH, an individual; THE
CHILDREN'S CENTER, INC., an Idaho
Corporation and THE IDAHO CHILDREN'S
CENTER, INC., an Idaho corporation,

Defendants.

* * * * *

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Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE Joel E. Tingey, District Judge.

* * * * *

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Statement of Facts in Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 12-16-09	1099
Statement of Facts in Support of Defendants' Cross Motion for Summary Judgment, filed 11-27-09	593
Statement of Facts in Support of Motion for Partial Summary Judgment, filed 11-13-09	238
Supplemental Affidavit of Richard J. Armstrong, filed 12-16-09.....	1110
Verdict Form, 3-10-10.....	1330
Verified Complaint (CV-08-2628), filed 5-5-08	21
Verified Complaint (CV-08-4025), filed 7-8-08	48

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Case: CV-2008-0002628 Current Judge: Joel E. Tingey
 Thomas O'Shea, etal. vs. The Children's Center, Inc., etal.

Date	Code	User	Judge
5/5/2008	SMIS	ROBBINS	Summons Issued (4)
	NCOC	ROBBINS	New Case Filed-Other Claims
	NOAP	ROBBINS	Plaintiff: O'Shea, Thomas Notice Of Appearance Gregory L. Crockett
	NOAP	ROBBINS	Plaintiff: O'Shea, Anne Donahue Notice Of Appearance Gregory L. Crockett
	NOAP	ROBBINS	Plaintiff: Grandview Credit, LLC, Notice Of Appearance Gregory L. Crockett
	NOAP	ROBBINS	Plaintiff: Foote, Caleb Notice Of Appearance Gregory L. Crockett
	NOAP	ROBBINS	Plaintiff: Donahue, Kate Larkin Notice Of Appearance Gregory L. Crockett
	NOAP	ROBBINS	Plaintiff: Donahue, John Kevin Notice Of Appearance Gregory L. Crockett
	NOAP	ROBBINS	Plaintiff: San Francisco Residence Club, Inc., Notice Of Appearance Gregory L. Crockett
		ROBBINS	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Crockett, Gregory L. (attorney for Donahue, John Kevin) Receipt number: 0018691 Dated: 5/7/2008 Amount: \$88.00 (Check) For: O'Shea, Thomas (plaintiff)
11/3/2008	NOAP	WOOLF	Defendant: Schneider, Dale A Notice Of Appearance Kipp L. Manwaring
		WOOLF	Filing: I7 - All Other Cases Paid by: Manwaring, Kipp L. (attorney for Schneider, Dale A) Receipt number: 0047614 Dated: 11/4/2008 Amount: \$58.00 (Check) For: Schneider, Dale A (defendant)
11/5/2008	STIP	DOOLITTL	Stipulation for Substitution of Counsel for Dale A. Schneider (fax)
11/7/2008	NOAP	WOOLF	Defendant: The Children's Center, Inc., Notice Of Appearance Marc J. Weipel
	NOAP	WOOLF	Defendant: The Idaho Children's Center, Inc., Notice Of Appearance Marc J. Weipel
	NOAP	WOOLF	Defendant: Smith, Matthew F Notice Of Appearance Marc J. Weipel
	ANSW	WOOLF	Defendant's Answer to Plaintiff's Complaint
		WOOLF	Filing: I7 - All Other Cases Paid by: Weipel, Marc J. (attorney for Smith, Matthew F) Receipt number: 0048884 Dated: 11/12/2008 Amount: \$58.00 (Check) For: Smith, Matthew F (defendant)
12/5/2008	MOTN	DOOLITTL	Motion to Dismiss
	AFFD	DOOLITTL	Affidavit for Indemnification or Advance Expenses
	AFFD	DOOLITTL	Affidavit of Dale Schneider
12/10/2008	NOTH	WILLIAMS	Notice Of Hearing - 1/7/09 @ 9 a.m.

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Case: CV-2008-0002628 Current Judge: Joel E. Tingey
Thomas O'Shea, etal. vs. The Children's Center, Inc., etal.

Date	Code	User		Judge
12/26/2008	ORDR	QUINTANA	Order for Consolidation w/CV-08-4025	Joel E. Tingey
12/31/2008	NOTH	WILLIAMS	Amended Notice Of Hearing - 1/14/09 @ 9:30 a.m.	Joel E. Tingey
1/14/2009	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry	Joel E. Tingey
1/16/2009	ORDR	SOUTHWIC	Order	Joel E. Tingey
1/22/2009	ACKN	DOOLITTL	Acknowledgement Of Service 10-16-08 Marc J. Weinpel	Joel E. Tingey
1/26/2009	MOTN	WILLIAMS	Motion for Costs and Fees	Joel E. Tingey
	AFFD	WILLIAMS	Affidavit of Counsel	Joel E. Tingey
	MEMO	WILLIAMS	Memorandum of Costs and Fees	Joel E. Tingey
1/27/2009	NOTH	WILLIAMS	Notice Of Hearing - 2/19/09 @ 9 a.m.	Joel E. Tingey
2/20/2009	ORDR	SOUTHWIC	Order (Schneider's mo for costs and attorney fees is denied w/o prej)	Joel E. Tingey
7/8/2009	HRSC	SOUTHWIC	Hearing Scheduled (Jury Trial 03/02/2010 10:00 AM) 4 days	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Pretrial Conference 02/16/2010 08:30 AM)	Joel E. Tingey
2/16/2010	DCHH	SOUTHWIC	Hearing result for Pretrial Conference held on 02/16/2010 08:30 AM: District Court Hearing Held Court Reporter: Number of Transcript Pages for this hearing estimated:	Joel E. Tingey
3/1/2010	TLST	SOUTHWIC	Hearing result for Jury Trial held on 03/02/2010 10:00 AM: Trial Started 4 days	Joel E. Tingey
5/18/2010	MINE	SOUTHWIC	Minute Entry Hearing type: Jury Trial Hearing date: 5/18/2010 Time: 4:25 pm Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: Grandview Credit, LLC, Attorney: Gregory Crockett Party: San Francisco Residence Club, Inc., Attorney: Gregory Crockett Party: Anne O'Shea, Attorney: Gregory Crockett Party: Caleb Foote, Attorney: Gregory Crockett Party: John Donahue, Attorney: Gregory Crockett Party: Kate Donahue, Attorney: Gregory Crockett Party: Thomas O'Shea, Attorney: Gregory Crockett	Joel E. Tingey
7/2/2010	ORDR	SOUTHWIC	Order on motion for costs and attorney fees	Joel E. Tingey
	JDMT	SOUTHWIC	Judgment of Costs and Attorney fees	Joel E. Tingey

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Case: CV-2008-0002628 Current Judge: Joel E. Tingey
Thomas O'Shea, etal. vs. The Children's Center, Inc., etal.

Date	Code	User	Judge
7/2/2010	STATUS	SOUTHWIC	Case Status Changed: Closed Joel E. Tingey

Date: 8/13/2010

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey
Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User		Judge
3/5/2008	CERT	DOOLITTL	Certificate Of Service of Defendant High Mark Development, LLC's 4th Requests for Production of Documents and Things to Plaintiffs Thomas O'Shea and Anne Donnahue O'Shea (fax)	Joel E. Tingey
7/8/2008	SMIS	DOOLITTL	Summons Issued (3)	Joel E. Tingey
	NCOC	DOOLITTL	New Case Filed-Other Claims	Joel E. Tingey
	NOAP	DOOLITTL	Plaintiff: O'Shea, Thomas Notice Of Appearance Gregory L. Crockett	Joel E. Tingey
	NOAP	DOOLITTL	Plaintiff: O'Shea, Anne Donahue Notice Of Appearance Gregory L. Crockett	Joel E. Tingey
		DOOLITTL	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Crockett, Gregory L. (attorney for O'Shea, Thomas) Receipt number: 0028936 Dated: 7/9/2008 Amount: \$88.00 (Check) For: O'Shea, Thomas (plaintiff)	Joel E. Tingey
	NOAP	DOOLITTL	Plaintiff: Donahue, John Kevin Notice Of Appearance Gregory L. Crockett	Joel E. Tingey
	NOAP	DOOLITTL	Plaintiff: San Francisco Residence Club, Inc. Notice Of Appearance Gregory L. Crockett	Joel E. Tingey
	NOAP	DOOLITTL	Plaintiff: Donahue, Kate Larkin Notice Of Appearance Gregory L. Crockett	Joel E. Tingey
	NOAP	DOOLITTL	Plaintiff: Foote, Caleb Notice Of Appearance Gregory L. Crockett	Joel E. Tingey
8/22/2008	NOTH	WOOLF	Notice Of Hearing (left blank)	Joel E. Tingey
	MEMO	WOOLF	Memorandum in Support of Defendants' Motion to Dismiss	Joel E. Tingey
	MOTN	WOOLF	Defendants' Motion to Dismiss	Joel E. Tingey
8/28/2008	NTOS	WILLIAMS	Notice Of Service of Discovery	Joel E. Tingey
9/2/2008		WOOLF	P's Reply to D's Motion to Dismiss	Joel E. Tingey
	NOTH	ROBBINS	Amended Notice Of Hearing 9/25/08 at 9:15 a.m.	Joel E. Tingey
9/3/2008	SUBI	WOOLF	Subpoena Duces Tecum (Paul Fife)	Joel E. Tingey
	NDDT	DOOLITTL	Notice Of Deposition Duces Tecum of Paul Fife	Joel E. Tingey
9/4/2008	ACKN	DOOLITTL	Acknowledgement Of Service 8-20-08 Benjamin D. Arave	Joel E. Tingey
	ASRV	DOOLITTL	Affidavit of Service - 7-31-08 Gordon Arave	Joel E. Tingey
	ASRV	DOOLITTL	Affidavit of Service - 7-31-08 High Mark Development by serving Gordon Arave, Officer	Joel E. Tingey
9/12/2008	MOTN	WOOLF	Motion to Quash P's Subpoena Duces Tecum Directed to Paul Fife	Joel E. Tingey
		SOUTHWIC	Certificate of Service of Discovery	Joel E. Tingey
		SOUTHWIC	Certificate of Service of Motion to Quash Pl's subpoena duces tecum directed to Paul Fife	Joel E. Tingey
	NOTC	SOUTHWIC	Amended Notice of Hearing	Joel E. Tingey

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey

Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User		Judge
9/12/2008	MOTN	SOUTHWIC	Motion to shorten time to file and hear written motion	Joel E. Tingey
	ORDR	SOUTHWIC	Order Shortening Time to File and Hear motion	Joel E. Tingey
9/25/2008	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry	Joel E. Tingey
9/26/2008	ORDR	SOUTHWIC	Memorandum Decision and Order	Joel E. Tingey
10/1/2008		SOUTHWIC	Certificate of Service of Defs' objections and responses to Pls' first set of interrogatories, request for production and request for admission	Joel E. Tingey
	COMP	DOOLITTL	1st Amended Verified Complaint Filed	Joel E. Tingey
10/3/2008	SMIS	WOOLF	Summons Issued	Joel E. Tingey
10/7/2008	AFFD	ROBBINS	Affidavit of Service by Mail	Joel E. Tingey
10/14/2008	NTOS	DOOLITTL	Notice Of Service of Discovery	Joel E. Tingey
10/21/2008	SMIS	DOOLITTL	Summons Issued (2)	Joel E. Tingey
		DOOLITTL	Letter to Pro Se Defendant Re: Response (why response cannot be considered formal Answer)	Joel E. Tingey
	ANSW	WILLIAMS	Answer to First Amended Verified Complaint and Third Party Complaint	Joel E. Tingey
	NOAP	WILLIAMS	Defendant: Arave, Jared Notice Of Appearance Richard J. Armstrong	Joel E. Tingey
	NOAP	WILLIAMS	Defendant: High Mark Development, LLC, Notice Of Appearance Richard J. Armstrong	Joel E. Tingey
	NOAP	WILLIAMS	Defendant: Arave, Gordon Notice Of Appearance Richard J. Armstrong	Joel E. Tingey
	NOAP	WILLIAMS	Defendant: Arave, Benjamin D Notice Of Appearance Richard J. Armstrong	Joel E. Tingey
10/23/2008		WILLIAMS	Filing: 17 - All Other Cases Paid by: Armstrong, Richard J. (attorney for Arave, Benjamin D) Receipt number: 0045900 Dated: 10/23/2008 Amount: \$58.00 (Credit card) For: Arave, Benjamin D (defendant)	Joel E. Tingey
		WILLIAMS	Filing: Technology Cost - CC Paid by: Armstrong, Richard J. (attorney for Arave, Benjamin D) Receipt number: 0045900 Dated: 10/23/2008 Amount: \$3.00 (Credit card) For: Arave, Benjamin D (defendant)	Joel E. Tingey
11/4/2008	RTOS	QUINTANA	Return Of Service The Idaho Childrens's Center Inc.	Joel E. Tingey
11/7/2008	NOAP	WOOLF	Defendant: The Children's Center, Inc. Notice Of Appearance Marc J. Weinpel	Joel E. Tingey
	NOAP	WOOLF	Defendant: The Idaho Children's Center, Inc. Notice Of Appearance Marc J. Weinpel	Joel E. Tingey
	ANSW	WOOLF	Defendant's Answer to Plaintiff's Complaint	Joel E. Tingey

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey

Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User	Judge
11/7/2008		WOOLF	Filing: 17 - All Other Cases Paid by: Weinpel, Marc J. (attorney for The Children's Center, Inc.) Receipt number: 0048891 Dated: 11/12/2008 Amount: \$58.00 (Check) For: The Children's Center, Inc. (defendant)
11/26/2008	NORT	DOOLITTL	Note Of Issue/request For Trial
12/1/2008	NOTC	ROBBINS	Notice of Taking Deposition Duces Tecum of Def Gordon Arave
12/4/2008	MOTN	SOUTHWIC	Motion for protective order
12/8/2008	MEMO	WOOLF	Memorandum in Support of Motion for Protective Order
	NOTC	WOOLF	Notice of Taking Deposition Duces Tecum of Defendant Gordon Arave
	NOTC	WOOLF	Notice of Taking Deposition Duces Tecum of Defendant Benjamin Arave
	NOTC	WOOLF	Notice of Taking Deposition Duces Tecum of Defendant Jared Arave
	NOTC	WOOLF	Notice of Taking Deposition Duces Tecum of Defendant Scott Williams
	MOTN	WILLIAMS	Motion for Limited Admission
12/11/2008		SOUTHWIC	Certificate of Service of Def high mark Development, LLC's second set of interrogatories and requests for production of documents and things to plaintiffs Thomas O'Shea and Anne Donohue O'Shea
	AFFD	WOOLF	Affidavit of Counsel Gregory L. Crockett
	MOTN	WOOLF	Plaintiffs' Reply to Defendants' Motion for Protective Order
12/15/2008	MOTN	WILLIAMS	Motion for Partial Judgment on the Pleadings **fax**
	MEMO	WILLIAMS	Memorandum in Support of Motion for partial Judgment on the Pleadings **fax**
12/16/2008	HRHD	SOUTHWIC	Hearing Held -- in chambers off record
	ORPT	SOUTHWIC	Order Setting Pretrial Conference/trial
	HRSC	SOUTHWIC	Hearing Scheduled (Jury Trial 10/06/2009 10:00 AM)
	HRSC	SOUTHWIC	Hearing Scheduled (Pretrial Conference 09/23/2009 08:30 AM)
	NOTH	WOOLF	Notice Of Hearing 1/27/2009 @ 9:00 am
	ORDR	SOUTHWIC	Order granting motion for limited admission - Brinton M. Wilkins
	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum of Defendant Jared Arave
	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum of Defendant Benjamin Arave

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey
Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User		Judge
12/16/2008	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum of Defendant Gordon Arave	Joel E. Tingey
	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum of Defendant Scott Williams	Joel E. Tingey
12/22/2008	STIP	DOOLITTL	Stipulation for Consolidation	Joel E. Tingey
12/23/2008	NDDT	WILLIAMS	Notice Of Taking Deposition Duces Tecum of Matthew Smith	Joel E. Tingey
12/26/2008	ORDR	QUINTANA	Order for Consolidation	Joel E. Tingey
12/29/2008	HRSC	QUINTANA	Hearing Scheduled (Motion 01/14/2009 09:30 AM) Manwaring Motion to Dismiss Motion to Advance Fees	Joel E. Tingey
12/31/2008		DOOLITTL	Objection to Defendant Dale Schneider's Motion to Dismiss	Joel E. Tingey
	AFFD	DOOLITTL	Affidavit of Counsel Sean J. Coletti	Joel E. Tingey
1/13/2009	NOTC	WILLIAMS	Notice of Deposition	Joel E. Tingey
	NTOS	DOOLITTL	Notice Of Service of Discovery	Joel E. Tingey
1/14/2009	DCHH	SOUTHWIC	Hearing result for Motion held on 01/14/2009 09:30 AM: District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: Manwaring Motion to Dismiss Motion to Advance Fees - under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry	Joel E. Tingey
1/16/2009	ORDR	SOUTHWIC	Order	Joel E. Tingey
1/20/2009		DOOLITTL	Plaintiff's Reply to Defendants' Motion for Judgment on the Pleadings	Joel E. Tingey
1/21/2009		ROBBINS	Certificate of Service of Defdant High mark Development, LLC's Third Set of Interrogatories and Requests for Production of Documents and Things to Plf's Thomas O'Shea and Anne Donahue O'shea (fax)	Joel E. Tingey
1/22/2009	ASRV	DOOLITTL	Affidavit of Service - 12-23-08 Scott Williams	Joel E. Tingey
	ASRV	DOOLITTL	Affidavit of Service - 12-4-08 Soctt Williams (Subpoena)	Joel E. Tingey
	ASRV	DOOLITTL	Affidavit of Service - 9-9-08 Paul Fife (Subpoena)	Joel E. Tingey
	ASRV	DOOLITTL	Affidavit of Service - 10-13-08 Jared Arave	Joel E. Tingey
1/23/2009	MEMO	DOOLITTL	Reply Memorandum in Support of Motion for Partial Judgment on the Pleadings (fax)	Joel E. Tingey
1/27/2009	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry	Joel E. Tingey
1/30/2009		DOOLITTL	Objection to Defendant Dale Schneider's Motion for Costs and Fees	Joel E. Tingey

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 Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User		Judge
2/3/2009	NDDT	DOOLITTL	Notice Of Deposition Duces Tecum (fax)	Joel E. Tingey
	NOTC	ROBBINS	Notice of Taking Deposition Duces Tecum of Def High Mark Development, LLC	Joel E. Tingey
	NOTC	ROBBINS	Notice of Taking Deposition Duces Tecum of Matthew F Smith	Joel E. Tingey
	NTOS	ROBBINS	Notice Of Service of Discovery	Joel E. Tingey
2/19/2009	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry	Joel E. Tingey
	NTOS	DOOLITTL	Notice Of Service of Discovery (Plaintiff Thomas O'Shea's and Anne Donahue O'Shea's Responses to Defendant High Mark Development, LLC's 3rd Set of Interrogatories and Requests for Prodction of Documents and Things)	Joel E. Tingey
2/20/2009	ORDR	SOUTHWIC	Order(Schneider's motion for costs and attorney fees is denied w/o prej)	Joel E. Tingey
2/27/2009	NTOS	WOOLF	Amended Notice of Service of Discovery (Plaintiffs' Second Set of Interrogatories, Requests for Productions and Requests for Admission)	Joel E. Tingey
3/2/2009	NDDT	DOOLITTL	Notice Of Deposition Duces Tecum	Joel E. Tingey
3/9/2009	NTOS	WILLIAMS	Notice Of Service of Discovery	Joel E. Tingey
	NOTC	WILLIAMS	Amended Notice of Taking Deposition Duces Tecum of Defendant High Mark Development, LLC Pursuant to I.R.C.P. 30(b)(6)	Joel E. Tingey
	CERT	DOOLITTL	Certificate Of Service of Defendants' Responses and Objections to Plaintiffs' 2nd Set of Interrogatories, Requests for Production and Requests for Admission (fax)	Joel E. Tingey
3/16/2009	NTOS	DOOLITTL	Notice Of Service of Discovery (!st Supplement to Plaintiffs Thomas O'Shea and Anne Donahue O'Sheas' Responses High Mark Development, LLC's 1st Set of Requests for Production of Documents and Things)	Joel E. Tingey
3/26/2009	CERT	DOOLITTL	Certificate Of Service of Subpoena to Appear for Deposition and to produce Documents (Brent Butikofer) (fax)	Joel E. Tingey
	NDDT	DOOLITTL	Notice Of Deposition Duces Tecum (fax)	Joel E. Tingey
4/2/2009	RTOS	WOOLF	Return Of Service 3/27/2009 High Mark Development, LLC by serving Brent Butikofer	Joel E. Tingey
	SUBI	WOOLF	Subpoena to Appear for Deposition and to Produce Documents (Brent Butikofer)	Joel E. Tingey
	NTOS	WOOLF	Notice Of Service of Discovery (Plaintiffs' 4th Set of Requests for Admission)	Joel E. Tingey

Date: 8/13/2010

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey

Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User		Judge
4/2/2009	NTOS	WOOLF	Notice Of Service of Discovery (Ps' Thomas O'Shea and Anne Donahue O'Shea's Responses to Defendant High Mark Development, LLC's Fourth Requests for Production of Documents and Things)	Joel E. Tingey
	NTOS	WOOLF	Notice Of Service of Discovery (Ps' 1st Set of Interrogatories Requests for Production to Defendants The Children's Center, Inc., The Idaho Children's Center, Inc., and Matthew F. Smith)	Joel E. Tingey
4/7/2009	NDDT	MCGARY	Notice Of Deposition Duces Tecum of Richard J. Armstrong, Esq.	Joel E. Tingey
4/8/2009	NDDT	MCGARY	Notice Of Deposition Duces Tecum of Marc J. Weinpel, Esq.	Joel E. Tingey
4/13/2009		WILLIAMS	Certificate of Service of Defendants' Objections and Responses to Plaintiffs' Third Set of Requests for PRoduction and Requests for Admission **fax**	Joel E. Tingey
	MOTN	DOOLITTL	Motion to Quash or Modify Subpoena Duces Tecum	Joel E. Tingey
	MEMO	DOOLITTL	Memorandum in Support of Motion to Quash Or Modify Subpoena Duces Tecum	Joel E. Tingey
4/14/2009	NOTH	DOOLITTL	Notice Of Hearing 5-5-09 @ 8:30 a.m. (fax)	Joel E. Tingey
4/15/2009	NOTC	WILLIAMS	Notice of Admitted Facts	Joel E. Tingey
4/22/2009	NOTH	WOOLF	Notice Of Hearing - Amended 5/05/2009 @ 8:30 AM	Joel E. Tingey
4/23/2009		DOOLITTL	Objection to Plaintiffs' Notice of Admitted Facts and Request for Sanctions	Joel E. Tingey
4/24/2009	MOTN	ROBBINS	Objection to Motion to Quash or Modify Subpoena Duces Tecum	Joel E. Tingey
	AFFD	ROBBINS	Affidavit of Counsel Sean J Colette In objection to Motion to Quash or. Modify Supboena Duces Tecum	Joel E. Tingey
	AFFD	ROBBINS	Affidavit of Counsel Gregory L Crockett in Objection to Motion to Quash or Modify Subpoena Duces Tecum	Joel E. Tingey
		ROBBINS	Withdrawal of Notice of Admitted Facts	Joel E. Tingey
5/1/2009	MEMO	DOOLITTL	Reply Memorandum in Support of Motion to Quash or Modify Subpoena Duces Tecum (fax)	Joel E. Tingey
5/5/2009	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry	Joel E. Tingey
5/6/2009	CERT	WILLIAMS	Certificate Of Service of Defendants' Objections and Responses to Plaintiffs' Fourth Set of Requests for Admission ***f***	Joel E. Tingey

Date	Code	User		Judge
5/6/2009		ROBBINS	Amended Subpoena Duces Tecum	Joel E. Tingey
		ROBBINS	Amended Notice of Taking Deposition Duces Tecum of Richard J Armstrong, Esq.	Joel E. Tingey
5/13/2009	NOTC	WOOLF	Second Amended Notice of Taking Deposition Duces Tecum of Defendant High Mark Defelopment, LLC Pursuant to I.R.C.P. 30(b)(6)	Joel E. Tingey
	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum of Defendant High Mark Development, LLC Pursuant to I.R.C.P. 30 (b)(6)	Joel E. Tingey
5/14/2009		ROBBINS	Certificate of Service of Def's High Mark Development, LLC's Fourth Set of Interrogatories Fifth Requests for Production of Documents and things to Plaintiffs Thomas O'shea and Anne Donahue O Shea (fax)	Joel E. Tingey
5/15/2009	NTOS	DOOLITTL	Notice Of Service of Discovery	Joel E. Tingey
5/20/2009	ORDR	SOUTHWIC	Order (denying request for sanctions)	Joel E. Tingey
5/22/2009	CERT	WILLIAMS	Certificate Of Service of Defendant High Mark Development, LLC's Fifth Set of Interrogatories to Plaintiffs Thomas O'Shea, Anne Donahue O'Shea, and the San Francisco Residence Club, Inc. **fax**	Joel E. Tingey
6/2/2009	NOTC	WILLIAMS	Notice of Deposition of Kevin Donahue **fax**	Joel E. Tingey
	NOTC	WILLIAMS	Notice of Deposition of Caleb Foote **fax**	Joel E. Tingey
	NOTC	WILLIAMS	Notice of Deposition of Kate Donahue **fax**	Joel E. Tingey
	NOTC	WILLIAMS	Notice of Deposition of Anne O'Shea **fax**	Joel E. Tingey
	NOTC	WILLIAMS	Notice of Deposition Pursuant to Idaho R. Civ. P. 30((b)(6) of Grandview Credit, LLC. **fax**	Joel E. Tingey
	NOTC	WILLIAMS	Notice of Deposition Pursuant to Idaho R. Civ. P. 30((b)(6) of San Francisco Residence Club, Inc. **fax**	Joel E. Tingey
6/4/2009	MISC	WOOLF	Certificate of Service of Defendants' Supplemental Responses and Objections to Plaintiffs' Second Set of Interrogatories	Joel E. Tingey
6/10/2009	NOTC	ROBBINS	Amended Notice of Deposition of Kevin Donahue	Joel E. Tingey
	NOTC	ROBBINS	Amended Notice of Deposition of Grandview Credit, LLC	Joel E. Tingey
	NOTC	ROBBINS	Amended Notice of Deposition of San Francisco Residence Club, Inc.	Joel E. Tingey
	NOTC	ROBBINS	Amended Notice of Deposition of Caleb Foote	Joel E. Tingey
	NOTC	ROBBINS	Amended Notice of Deposition of Anne O'Shea	Joel E. Tingey
	NOTC	ROBBINS	Amended Notice of Deposition of Kate Donahue	Joel E. Tingey
6/16/2009	NTOS	ROBBINS	Notice Of Service of Discovery	Joel E. Tingey
6/17/2009	MISC	WOOLF	Certificate of Service of Defendants' Objections and Responses to Plaintiff's Fourth Request for Production of Documents	Joel E. Tingey

Date	Code	User		Judge
6/19/2009	MOTN	ROBBINS	Plf's Motion to Extend Time to Disclose Expert Witnesses	Joel E. Tingey
	NOTH	ROBBINS	Notice Of Hearing	Joel E. Tingey
6/24/2009	MOTN	ROBBINS	Motion for Limited Admission	Joel E. Tingey
	NOTH	ROBBINS	Notice Of Hearing 7/9/09 at 9:15 am	Joel E. Tingey
6/29/2009		WOOLF	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Huie, Fernambacq & Stewart, LLP Receipt number: 0029012 Dated: 6/29/2009 Amount: \$194.00 (Cashiers Check)	Joel E. Tingey
		WOOLF	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Huie, Fernambacq & Stewart, LLP Receipt number: 0029012 Dated: 6/29/2009 Amount: \$28.00 (Cashiers Check)	Joel E. Tingey
	NOTC	WOOLF	Notice of Joinder in Plaintiffs' Motion to Extend Time to Disclose Expert Witnesses and Motion to Extend Other Deadlines in the Court's Order and Notice Setting Jury Trial	Joel E. Tingey
		KESTER	Plaintiffs' Disclosure of Expert Witnesses, Pending Plaintiffs' Motion to Extend Time	Joel E. Tingey
	STIP	KESTER	Stipulation for Limited Admission	Joel E. Tingey
6/30/2009	NOTH	WOOLF	Notice Of Hearing 7/09/2009 @ 9:15 AM	Joel E. Tingey
7/7/2009	ORDR	SOUTHWIC	Order	Joel E. Tingey
7/8/2009	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: None - hrg was digitally recorded Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry	Joel E. Tingey
	CONT	SOUTHWIC	Hearing result for Pretrial Conference held on 09/23/2009 08:30 AM: Continued	Joel E. Tingey
	CONT	SOUTHWIC	Hearing result for Jury Trial held on 10/06/2009 10:00 AM: Continued 4-5 days	Joel E. Tingey
	ORPT	SOUTHWIC	Order Setting Pretrial Conference/trial	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Jury Trial 03/02/2010 10:00 AM) 4 days	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Pretrial Conference 02/16/2010 08:30 AM)	Joel E. Tingey
7/14/2009	NDDT	DOOLITTL	Notice Of Continuance of Depositions Duces Tecum	Joel E. Tingey
7/28/2009	NOTC	DOOLITTL	Notice of Bankruptcy Filing and Automatic Stay Pursuant to 11 U.S.C. 362 (Matthew F. Smith) ONLY	Joel E. Tingey
8/6/2009	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum Pursuant to Idaho R. Div. P. 30(b)(6) of Grandview Credit, LLC (fax)	Joel E. Tingey

Date	Code	User		Judge
8/6/2009	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum of Caleb Foote (fax)	Joel E. Tingey
	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum of Kevin Donahue (fax)	Joel E. Tingey
	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum of Kate Donahue	Joel E. Tingey
	NDDT	DOOLITTL	Amended Notice Of Deposition Duces Tecum Pursuant to Idaho R. Civ. P. 30(b)(6) of San Francisco Residence Club, Inc.	Joel E. Tingey
8/12/2009	NOTC	ROBBINS	Second Amended Notice of Deposition of Kevin Donahue	Joel E. Tingey
	NOTC	ROBBINS	Second Amended Notice of Deposition of San Francisco Residence Club, Inc.	Joel E. Tingey
9/11/2009		LYKE	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Ken Lawsom Receipt number: 0041991 Dated: 9/11/2009 Amount: \$10.00 (Cash)	Joel E. Tingey
	NTOS	WOOLF	Notice Of Service of Discovery (Plaintiffs' Third Set of Interrogatories and Fifth Set of Requests for Production)	Joel E. Tingey
10/14/2009		LYKE	Certificate of Service of Defendants' Responses and Objections to Plaintiffs' Third Set of Interrogatories and Fifth Set of Requests for Production	Joel E. Tingey
10/30/2009	NTOS	LYKE	Notice Of Service of Discovery	Joel E. Tingey
11/13/2009	ORDR	SOUTHWIC	Order granting partial judgment on the pleadings	Joel E. Tingey
	MOTN	KESTER	Motion for Partial Summary Judgment	Joel E. Tingey
	BRIF	KESTER	Brief in Support of Motion for Partial Summary Judgment	Joel E. Tingey
		KESTER	Statement of Facts in Support of Motion for Partial Summary Judgment	Joel E. Tingey
	AFFD	KESTER	Affidavit of Jeffrey L. Needs	Joel E. Tingey
	NOTH	KESTER	Notice Of Hearing - 12/22/09 @ 9 a.m.	Joel E. Tingey
	AFFD	KESTER	Affidavit of Sean J. Coletti	Joel E. Tingey
11/18/2009	AFFD	KESTER	Affidavit of Marc J. Weinpel	Joel E. Tingey
11/27/2009	NOTH	DOOLITTL	Notice Of Hearing 12-22-09 @ 8:45 a.m.	Joel E. Tingey
		DOOLITTL	Defemdants' Cross Motion for Summary Judgment	Joel E. Tingey
	MEMO	DOOLITTL	Memorandum in Support of Defendants' Cross Motion for Summary Judgment	Joel E. Tingey
		DOOLITTL	Statement of Facts in Support of Defendants' Cross Motion for Summary Judgment	Joel E. Tingey
	AFFD	DOOLITTL	Affidavit of Richard J. Armstrong	Joel E. Tingey
	CERT	DOOLITTL	Certificate Of Service of Affidavit Richard J. Armstrong	Joel E. Tingey

Date	Code	User		Judge
12/11/2009	CERT	KESTER	Certificate Of Service of Defendants' Sixth Request for Production of Documents and Things **fax**	Joel E. Tingey
12/14/2009	MISC	WOOLF	Certificate of Service of Defendants' Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories	Joel E. Tingey
12/15/2009		DOOLITTL	Objection to Defendants' Cross-Motion for Summary Judgment / Reply Brief in Support of Plaintiffs' Motion for Partial Summary Judgment	Joel E. Tingey
	AFFD	DOOLITTL	2nd Affidavit of Sean J. Coletti	Joel E. Tingey
		DOOLITTL	Statement of Facts in Opposition to Defendants' Cross-Motion for Summary Judgment	Joel E. Tingey
12/16/2009	MEMO	DOOLITTL	Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment	Joel E. Tingey
		DOOLITTL	Statement of Facts in Opposition to Plaintiffs' Motion for Partial Summary Judgment	Joel E. Tingey
	AFFD	DOOLITTL	Supplemental Affidavit of Richard J. Armstrong	Joel E. Tingey
	CERT	DOOLITTL	Certificate Of Service of Supplemental Affidavit of Richard J. Armstrong	Joel E. Tingey
12/18/2009	MOTN	KESTER	Motion to Shorten Time	Joel E. Tingey
	MOTN	KESTER	Plaintiffs' Motion to Strike Portions of the Affidavits of Richard J. Armstrong	Joel E. Tingey
	NOTH	KESTER	Notice Of Hearing - 12/22/09 @ 9 a.m.	Joel E. Tingey
12/21/2009	MEMO	DOOLITTL	Memorandum in Opposition to Plaintiffs' Motion to Shorten Time, Objection to Plaintiffs' Notice of Hearing, and Request for Continuance of Summary Judgment Hearing (fax)	Joel E. Tingey
		WOOLF	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Smith & Pace Receipt number: 0057443 Dated: 12/21/2009 Amount: \$85.00 (Check)	Joel E. Tingey
12/22/2009	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey

Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User	Judge
12/22/2009	MINE	SOUTHWIC	Minute Entry Hearing type: Motion Hearing date: 12/22/2009 Time: 10:21 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: Anne O'Shea, Attorney: Gregory Crockett Party: Benjamin Arave, Attorney: Richard Armstrong Party: Caleb Foote, Attorney: Gregory Crockett Party: Gordon Arave, Attorney: Richard Armstrong Party: Grandview Credit, LLC, Attorney: Gregory Crockett Party: High Mark Development, LLC,, Attorney: Richard Armstrong Party: Jared Arave, Attorney: Richard Armstrong Party: John Donahue, Attorney: Gregory Crockett Party: Kate Donahue, Attorney: Gregory Crockett
		SOUTHWIC	Pl's abstract of the record
1/4/2010		LYKE	Reply Brief in Support of Plaintiffs' Motion to Strike Portions of the Affidavits of Richard J. Armstrong
1/6/2010	MEMO	DOOLITTL	Memorandum in Opposition to Motion to Strike Portions of the Affidavits of Richard J. Armstrong
	AFFD	DOOLITTL	3rd Affidavit of Richard J. Armstrong
	NOTC	DOOLITTL	Notice of Augmentation of Summary Judgment Record With 3rd Affidavit of Richard J. Armstrong
	NOTC	LYKE	Notice of Withdrawal of Motion to Strike and Vacation of Hearing
	NTOS	LYKE	Notice Of Service of Discovery
1/14/2010	ORDR	SOUTHWIC	Memorandum Decision and Order on Motions for Summary Judgment
	MISC	LYKE	Plaintiffs' Nomination of Mediator
1/26/2010	MOTN	LYKE	Plaintiffs' First Motion in Limine
	BRIF	LYKE	Brief Filed in Support of Plaintiffs' First Motion in Limine
	NOTH	LYKE	Notice Of Hearing Re: First Motion in Limine (02/10/10@9:15AM)
2/1/2010	MOTN	WOOLF	Defendants' Motion in Limine to Exclude Opinion Testimony of Paul Fife, Jeff Needs, and Brent Butikofer
	MEMO	WOOLF	Memorandum in Support of Defendants' Motion in Limine to Exclude Opinion Testimony of Paul Fife, Jeff Needs, and Brent Butikofer
	AFFD	WOOLF	Affidavit of Richard J. Armstrong in Support of Motion in Limine to Exclude Opinion Testimony of Paul Fife, Jeff Needs, and Brent Butikofer

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Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User	Judge
2/1/2010	NOTH	WOOLF	Notice Of Hearing 2/16/2010 @ 8:30 AM Joel E. Tingey
2/4/2010	MOTN	WOOLF	Defendants' Ex Parte Request to Appar at The February 10, 2010 Motion Hearing by Telephone 2/10/2010 @ 9:15 AM Joel E. Tingey
2/5/2010	ORDR	SOUTHWIC	Order granting ex parte request to appear at the February 10, 2010 motion hearing by telephone Joel E. Tingey
	MISC	KESTER	Defendants' Opposition to Plaintiffs' First Motion in Limine to Exclude Expert Testimony of E. Robert Miller Joel E. Tingey
	MOTN	WOOLF	Objection to Defendants' Motion in Limine Joel E. Tingey
	AFFD	WOOLF	Affidavit of Counsel Sean J. Coletti In Support of Objection to Defendants' Motion in Limine Joel E. Tingey
2/8/2010		LYKE	Reply Brief in Support of Plaintiff's First Motion in Limine Joel E. Tingey
2/10/2010	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: under 100 Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry Hearing type: Motion Hearing date: 2/10/2010 Time: 9:48 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: Anne O'Shea, Attorney: Gregory Crockett Party: Benjamin Arave, Attorney: Richard Armstrong Party: Caleb Foote, Attorney: Gregory Crockett Party: Gordon Arave, Attorney: Richard Armstrong Party: Grandview Credit, LLC, Attorney: Gregory Crockett Party: High Mark Development, LLC,, Attorney: Richard Armstrong Joel E. Tingey
2/11/2010	BRIF	WOOLF	Plaintiffs' Trial Brief Joel E. Tingey
	MISC	WOOLF	Plaintiffs' Proposed List of Trial Witness Joel E. Tingey
	MISC	WOOLF	Plaintiffs' Proposed Exhibit List Joel E. Tingey
	NTOS	WOOLF	Notice Of Service of Discovery (Plaintiff Grandview Credit, LLC's Supplemental Responses to Defendant High Mark Development, LLC's First Set of Interrogatories and Requests for Production of Documents and Things) Joel E. Tingey
	MISC	WOOLF	Plaintiffs' Proposed Jury Instructions Joel E. Tingey
2/16/2010	CERT	WOOLF	Certificate Of Service of Defendants' List of Witnesses, Exhibits, Jury Instructions, and Trial Brief Joel E. Tingey
	MISC	WOOLF	Defendants' List of Witnesses Joel E. Tingey

Date	Code	User		Judge
2/16/2010	MISC	WOOLF	Defendants' List of Exhibits	Joel E. Tingey
	BRIF	WOOLF	Defendants' Trial Brief	Joel E. Tingey
	MISC	WOOLF	Defendants' Proposed Jury Instructions	Joel E. Tingey
	DCHH	SOUTHWIC	Hearing result for Pretrial Conference held on 02/16/2010 08:30 AM: District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry Hearing type: Pretrial Conference Hearing date: 2/16/2010 Time: 4:25 pm Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: Anne O'Shea, Attorney: Gregory Crockett Party: Benjamin Arave, Attorney: Richard Armstrong Party: Caleb Foote, Attorney: Gregory Crockett Party: Gordon Arave, Attorney: Richard Armstrong Party: Grandview Credit, LLC, Attorney: Gregory Crockett Party: High Mark Development, LLC,, Attorney: Richard Armstrong Party: Jared Arave, Attorney: Richard Armstrong Party: John Donahue, Attorney: Gregory Crockett Party: Kate Donahue, Attorney: Gregory Crockett Party: San Francisco Residence Club, Inc., Attorney: Gregory Crockett Party: The Children's Center, Inc., Attorney: Marc Weinpel Party: The Idaho Children's Center, Inc., Attorney: Marc Weinpel Party: Thomas O'Shea, Attorney: Gregory Crockett	Joel E. Tingey
	ORDR	SOUTHWIC	Order(re: Def mo in limine)	Joel E. Tingey
		SOUTHWIC	Request for Jury	Joel E. Tingey
2/17/2010	MISC	WOOLF	Certificate of Service of Defendants' Supplemental Responses and Objections to Plaintiffs' Second Set of Interrogatories (fax)	Joel E. Tingey
2/18/2010	MISC	WOOLF	Defendants' Amended List of Exhibits (fax)	Joel E. Tingey
2/19/2010	MISC	LYKE	Mediation Status Report	Joel E. Tingey
2/22/2010	MISC	WOOLF	Plaintiffs' First Supplement to Proposed Jury Instructions	Joel E. Tingey
	MISC	WOOLF	Objection to Defendants' Trial Brief and Proposed Jury Instructions	Joel E. Tingey
2/23/2010	MISC	WOOLF	Defendants' Second Amended List of Exhibits (fax)	Joel E. Tingey

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey
Thomas O'Shea, etal. vs. High Mark Development, LLC., etal.

Date	Code	User	Judge
2/23/2010	MISC	WOOLF	Defendants' Supplemental Proposed Jury Instructions (fax)
	NOTC	WOOLF	Notice of Subpoenas to Appear at Trial
2/24/2010	ORDR	SOUTHWIC	Order
	MISC	WOOLF	Defendants' Third Amended List of Exhibits
	MISC	LYKE	Plaintiffs' First Amended Exhibit List
2/26/2010	MISC	WOOLF	Plaintiffs' Second Amended Exhibit List
3/1/2010	MISC	WOOLF	Acceptance of Service of Subpoena to Matt Smith & Marc J. Weinpel
	TLST	SOUTHWIC	Hearing result for Jury Trial held on 03/02/2010 10:00 AM: Trial Started 4 -5 days
	MISC	KESTER	Plaintiffs' Third Amended Exhibit List
3/8/2010		DOOLITTL	Defendant's 1st Amended List of Witnesses (fax)
3/10/2010	MINE	SOUTHWIC	Minute Entry Hearing type: Jury Trial Hearing date: 3/10/2010 Time: 3:47 pm Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: Anne O'Shea, Attorney: Gregory Crockett Party: Benjamin Arave, Attorney: Richard Armstrong Party: Caleb Foote, Attorney: Gregory Crockett Party: Gordon Arave, Attorney: Richard Armstrong Party: Grandview Credit, LLC, Attorney: Gregory Crockett Party: High Mark Development, LLC., Attorney: Richard Armstrong Party: Jared Arave, Attorney: Richard Armstrong Party: John Donahue, Attorney: Gregory Crockett Party: Kate Donahue, Attorney: Gregory Crockett
		SOUTHWIC	Verdict Form
	JDMT	SOUTHWIC	Judgment Upon Verdict
3/22/2010	MOTN	LYKE	Motion for Judgment Notwithstanding the Verdict, or, Alternatively, Motion for New Trial
	BRIF	LYKE	Brief Filed in Support of Motion for Judgment
	BRIF	DOOLITTL	Brief Filed in Support of Defendants' Memorandum of Costs and Attorneys' Fees
	MEMO	DOOLITTL	Verified Memorandum of Costs and Attorney's Fees
	AFFD	DOOLITTL	Affidavit of Richard J. Armstrong in Support of Memorandum of Costs and Attorney's Fees
3/23/2010	NOTH	KESTER	Notice Of Hearing - 4/14/10 @ 9 a.m.
3/24/2010	NOTH	KESTER	Amended Notice Of Hearing - 5/18/10 @ 9 a.m.

Date: 8/13/2010

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey
Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User		Judge
4/2/2010	MISC	LYKE	Preliminary Opposition to Defendants' Memorandum of Costs and Attorneys' Fees	Joel E. Tingey
5/11/2010	MEMO	DOOLITTL	Memorandum in Opposition to Motion for Judgment Notwithstanding the Verdict, or, Alternatively, for New Trial	Joel E. Tingey
5/17/2010		TBROWN	Reply Brief in Support of Motion for Judgment notwithstanding the verdict or alternativley for new trial	Joel E. Tingey
5/18/2010	MINE	SOUTHWIC	Minute Entry Hearing type: Motion Hearing date: 5/18/2010 Time: 10:10 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: Anne O'Shea, Attorney: Gregory Crockett Party: Benjamin Arave, Attorney: Richard Armstrong Party: Caleb Foote, Attorney: Gregory Crockett Party: Gordon Arave, Attorney: Richard Armstrong Party: Grandview Credit, LLC, Attorney: Gregory Crockett Party: High Mark Development, LLC,, Attorney: Richard Armstrong	Joel E. Tingey
5/28/2010	ORDR	SOUTHWIC	Decision and Order on Motion for JNOV or New Trial (Pls not entitled to JNOV on new trial)	Joel E. Tingey
6/2/2010	NOTH	ANDERSEN	Notice Of Hearing (6/23/10 @ 9:00)	Joel E. Tingey
6/3/2010	AFFD	DOOLITTL	Supplemental Affidavit of Richard J. Armstrong in Support of Memorandum of Costs and Attorneys' Fees (fax)	Joel E. Tingey
6/9/2010	MEMO	ANDERSEN	Supplemental Opposition to Defendants' Memorandum of Costs and Attorneys' Fees	Joel E. Tingey
	BRIF	DOOLITTL	Reply Brief Filed in Support of Defendants' Memorandum of Costs and Attorneys' Fees (fax)	Joel E. Tingey

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey
Thomas O'Shea, etal. vs. High Mark Development, LLC,, etal.

Date	Code	User	Judge
6/23/2010	MINE	QUINTANA	Minute Entry Hearing type: Motion for Costs and Attorney Fees Hearing date: 6/23/2010 Time: 9:05 am Courtroom: Court reporter: Minutes Clerk: Rhonda Quintana Tape Number: Party: Anne O'Shea, Attorney: Gregory Crockett Party: Benjamin Arave, Attorney: Richard Armstrong Party: Caleb Foote, Attorney: Gregory Crockett Party: Gordon Arave, Attorney: Richard Armstrong Party: Grandview Credit, LLC, Attorney: Gregory Crockett Party: High Mark Development, LLC,, Attorney: Richard Armstrong
7/2/2010	ORDR	QUINTANA	Order on Motion For Costs and Attorney Fees
	JDMT	QUINTANA	Judgment of Costs and Attorney Fees
	STATUS	QUINTANA	Case Status Changed: Closed
	CDIS	QUINTANA	Civil Disposition entered for: Arave, Benjamin D, Defendant; Arave, Gordon, Defendant; Arave, Jared, Defendant; High Mark Development, LLC,, Defendant; John Does I-X,, Defendant; The Children's Center, Inc., Defendant; The Idaho Children's Center, Inc., Defendant; Donahue, John Kevin, Plaintiff; Donahue, Kate Larkin, Plaintiff; Foote, Caleb, Plaintiff; Grandview Credit, LLC, Plaintiff; O'Shea, Anne Donahue, Plaintiff; O'Shea, Thomas, Plaintiff; San Francisco Residence Club, Inc., Plaintiff. Filing date: 7/2/2010
7/8/2010		SOLIS	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Hopkins, C Timothy Receipt number: 0032383 Dated: 7/12/2010 Amount: \$101.00 (Check) For: Donahue, John Kevin (plaintiff), Donahue, Kate Larkin (plaintiff), Foote, Caleb (plaintiff), Grandview Credit, LLC (plaintiff), O'Shea, Anne Donahue (plaintiff), O'Shea, Thomas (plaintiff) and San Francisco Residence Club, Inc. (plaintiff)
	APSC	SOLIS	Appealed To The Supreme Court
	NOTC	SOLIS	Notice of Appeal (to Supreme Court)
7/9/2010	NOTC	SOUTHWIC	Notice of Appeal (to Supreme Court)
7/14/2010	BNDC	SHULTS	Bond Posted - Cash (Receipt 32899 Dated 7/14/2010 for 100.00) \$100.00 deposit for Clerk's Record on Appeal.
	STATUS	SHULTS	Case Status Changed: Closed pending clerk action
	ABST	DOOLITTL	Abstract Judgment Issued

Date: 8/13/2010

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Case: CV-2008-0004025 Current Judge: Joel E. Tingey
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Date	Code	User		Judge
7/30/2010		LYKE	***** Returned Writ and \$ 2.00 Check *****	Joel E. Tingey
8/9/2010	APPL	LYKE	Application and Affidavit of Counsel in Support of Writ of Execution	Joel E. Tingey
	WRIT	LYKE	Writ Issued \$95,215.35 Ada	Joel E. Tingey
		LYKE	Miscellaneous Payment: Writs Of Execution Paid by: Wood Crapo LLC Receipt number: 0037450 Dated: 8/9/2010 Amount: \$2.00 (Check)	Joel E. Tingey
8/10/2010		SHULTS	Due Date 11-3-10 Docket # 37869	Joel E. Tingey
8/12/2010		SOLIS	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: hopkins roden Receipt number: 0038030 Dated: 8/12/2010 Amount: \$7.00 (Check)	Joel E. Tingey

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC
Gregory L. Crockett, ISBN 1640
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P. O. Box 51219
Idaho Falls, Idaho 83405-1219
Telephone: 208-523-4445
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

THOMAS O'SHEA and ANNE
DONAHUE O'SHEA, Trustees of the
Thomas and Anne O'Shea Trust u/d/t
DATED NOVEMBER 2, 1998;
GRANDVIEW CREDIT, LLC, a
California limited liability company;
CALEB FOOTE, an individual,
KATE LARKIN DONAHUE, an
individual, JOHN KEVIN
DONAHUE, an individual, and SAN
FRANCISCO RESIDENCE CLUB,
INC., a California corporation;

Plaintiffs,

vs.

THE CHILDREN'S CENTER, INC.,
an Idaho corporation; THE IDAHO
CHILDREN'S CENTER, INC.; an
Idaho corporation; MATTHEW F.
SMITH, individually and as Statutory
Trustee; DALE A. SCHNEIDER,
individually, and as Statutory Trustee;
and JOHN DOES I-X,

Defendants.

Case No. CV-08-2628

VERIFIED COMPLAINT

Fee Category: A.1.

Fee: \$88.00

COME NOW the Plaintiffs, and for cause of action against the Defendants,
complain and allege as follows:

GENERAL ALLEGATIONS

1. That Plaintiffs are collectively the owners of certain real property located in Bonneville County, Idaho at 1675 Curlew Drive, Ammon, Idaho 83406 and particularly described as follows:

Lot 1, Block 1, Oak Ridge, Division No. 1, to the City of Ammon, Bonneville County, Idaho, according to the plat recorded thereof March 29, 2001, as Instrument No. 1044372.

2. The Children's Center, Inc. is an Idaho corporation with its principal place of business in Bonneville County, Idaho.

3. The Idaho Children's Center, Inc. is an Idaho corporation with its principal place of business in Bonneville County, Idaho.

4. The individual Defendants, Matthew F. Smith and Dale Schneider, are residents of the State of Idaho and are officers, directors, shareholders and/or managers of both of the above named corporations.

5. The Plaintiffs purchased the subject property from High Mark Development, LLC in December 2007 and as a part of such transaction and by way of assignment and assumption, became the "Lessor" under that certain Lease Agreement dated June 20, 2006 between High Mark Development, LLC as "Lessor" and The Children's Center, Inc., as "Lessee".

6. For all purposes related to this cause of action, Plaintiffs are the successors in interest to the subject Lease Agreement, a copy of which is attached hereto marked as Exhibit "A" and is made a part hereof by this reference.

7. The Children's Center, Inc. entered into the Lease Agreement with Plaintiffs on June 19, 2006.

8. The Children's Center, Inc. failed to pay rent due on the Lease Agreement since January of 2008.

9. The Children's Center, Inc. vacated the premises at 1675 Curlew Drive, Ammon, Idaho on or about March 1, 2008.

10. Shortly before or after breaching the Lease Agreement and vacating the premises, Defendants Matthew F. Smith and Dale Schneider began conducting business as the Idaho Children's Center, Inc., located at 1975 Martha Avenue, Idaho Falls, ID 83404.

11. The Idaho Children's Center, Inc., is apparently the successor in interest and/or alter ego of The Children's Center, Inc. and is currently in possession and control of the assets of both corporations and is currently operating that certain going concern and business known as The Children's Center now known as The Idaho Children's Center now located at 1975 Martha Avenue, Idaho Falls, Idaho 83404.

12. The corporations are alter egos of the individual defendants, namely, Matthew F. Smith and Dale Schneider.

13. Matthew F. Smith and Dale Schneider are the principal officers and directors of both The Children's Center, Inc. and The Idaho Children's Center, Inc. and

they together and individually control ownership and management of both corporate entities.

14. John Does I through X are unknown and unnamed owners, shareholders, officers, directors and/or managers of The Children's Center, Inc. and/or The Idaho Children's Center, Inc. who are or may be liable to the Plaintiffs for damages alleged herein.

COUNT I

BREACH OF LEASE

15. The Plaintiffs incorporate paragraphs 1 through 14 of this Complaint as though the same were here set forth in full verbatim.

16. Defendants breached the subject Lease Agreement by having failed to pay when due rent as called for and required under said Lease Agreement in the amount of \$24,987.50 per month for the month of January, 2008 and each and every month thereafter.

17. The Defendants have breached the subject Lease Agreement by having vacated and abandoned the subject premises and property.

18. The Defendants have breached the subject Lease Agreement by having caused physical damage to the property and premises and the improvements thereon.

19. The Defendants have breached the subject Lease Agreement by having failed to timely pay utilities and services for the subject property, premises and the improvements thereon.

20. The Defendants have breached the subject Lease Agreement by having failed to timely pay all real and personal property taxes associated with or related to the subject property, premises and the improvements thereon.

21. The Defendants have breached the subject Lease Agreement by having failed to provide and maintain adequate and proper insurance coverage against loss or damage to the subject real property, premises and the improvements thereon.

22. The Plaintiffs have satisfied all conditions precedent to this cause of action including all notice requirements required under the subject Lease Agreement including, but not limited to, all duties of performance required by the Lessor under the subject Lease Agreement.

COUNT II

VIOLATION OF THE IDAHO UNIFORM FRAUDULENT TRANSFER ACT (I.C. §§55-901, et seq.)

23. Plaintiffs reallege paragraphs 1 through 22 of this Complaint as though the same were here set forth in full verbatim.

24. The going concern and operating business known as The Children's Center and now known as The Idaho Children's Center has apparently been transferred

from one corporate entity to the other with intent to hinder, delay and/or defraud the Plaintiffs in violation of Idaho Code §§55-913(1)(a).

25. There has apparently been a transfer and conveyance of the assets of The Children's Center, Inc. to The Idaho Children's Center, Inc. including but, not limited to, the entities' tangible and intangible assets without receiving equivalent value in exchange for the transfer in violation of Idaho Code §55-913(1)(b).

26. As a result of unlawful conveyances and transfers, The Idaho Children's Center, Inc. has been rendered a mere corporate shell in an apparent attempt to hinder, delay and/or defraud the Plaintiffs.

27. Distinctions between the two corporate entities should be disregarded by this Court since they are identical or nearly identical in all aspects of their business and the management thereof.

28. It is apparent that the only reason to roll the business of The Children's, Inc. into The Idaho Children's Center, Inc. is to hinder, delay and defraud the Plaintiffs and other creditors of both entities.

29. The Defendants retained possession or control of property transferred after the transfer in violation of Idaho Code § 55-913(2)(b).

30. The transfer was of substantially all of the Defendant's assets, in violation of Idaho Code § 55-913(2)(e).

31. The Defendants' transfer of assets of any kind was and is an effort to remove and conceal assets in violation of Idaho Code §59-913(2)(g).

32. The transfer of any assets from one corporate entity to the other was apparently made for no or nominal value in violation of Idaho Code §55-913(2)(h).

33. The transfer occurred shortly before and/or after a substantial debt was incurred, in violation of Idaho Code § 55-913(2)(j).

COUNT III

PIERCING THE CORPORATE VEIL

34. The Plaintiffs reallege paragraphs 1 through 33 of this Complaint as though the same were here set forth in full verbatim.

35. There is adequate grounds and factual basis both in law and equity for the Court to pierce the corporate veil(s) and hold each of the individual and corporate Defendants liable and responsible for all damages recoverable by the Plaintiffs herein and proven at the trial of this cause.

36. The unknown Defendants named herein as John Does I through X are the shareholders, owners, officers, directors, and/or managers of either of the above named corporate entities who are or have any responsibility for causing the Plaintiffs' damages. Plaintiffs reserve the right to amend this Complaint at such times as the true identities of such individuals becomes known.

37. Under the circumstances applicable to this case, there is such a unity of interest and ownership as between the separate personalities of the above-named corporations and the above-named individuals that the Court should pierce the corporate

veil and award the Plaintiffs damages as against each of the individual and corporate named Defendants, jointly and severally.

38. The acts, conduct and contractual breach by each of the above named Defendants is egregious such that an inequitable result will follow and the Court would sanction a fraud or promote injustice by failing to disregard the separate personality of the corporations and the individuals and the Court should thereby impose personal liability on the corporations' officers, directors and shareholders including but, not limited to, the Defendants Matthew F. Smith and Dale Schneider.

COUNT IV

ATTORNEY'S FEES

39. Plaintiffs reallege paragraphs 1 through 38 of this Complaint as if the same were here set forth in full verbatim.

40. The Plaintiffs have and will continue to incur substantial attorney's fees and costs in prosecuting and bringing this action and the Plaintiffs have a right to recover their attorney's fees and costs incurred and to be incurred herein in accordance with the subject Lease Agreement and Idaho Code §§12-120 and 12-121.

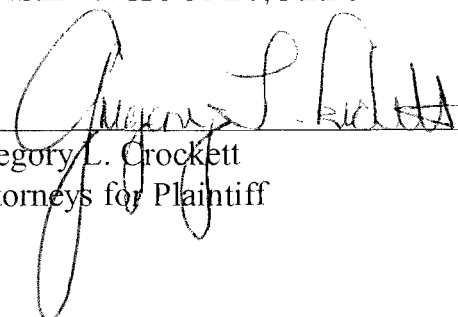
41. The sum of \$5,000.00 is a reasonable attorney's fees should this matter be uncontested by the Defendants herein; but the Court should award such additional and further fees and costs should this matter be contested by the Defendants or any of them.

WHEREFORE, the Plaintiffs pray the judgment, order and decree of this Court, as follows:

1. That Judgment be entered for the Plaintiffs and against each of the Defendants, jointly and severally;
2. That the Plaintiffs be awarded their damages in an amount to be proven at trial but not less than the sum of \$24,987.50 per calendar month from January 2008 through the expiration of the lease term on June 19, 2016;
3. That the Plaintiffs be awarded their costs and reasonable attorney's fees incurred and to be incurred herein; and
4. That the Plaintiffs be awarded such other and further relief as may be just and equitable in the premises.

DATED this 2nd day of May, 2008.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By 
Gregory L. Crockett
Attorneys for Plaintiff

STATE OF CALIFORNIA)

) ss.

County of Alameda)

THOMAS O'SHEA, being first duly sworn, deposes and says:

That I am the one of the Plaintiffs in the above-entitled action, that I have read the above and foregoing Verified Complaint, know the contents thereof, and that I believe the facts therein stated to be true.

Thomas O'Shea
THOMAS O'SHEA

SUBSCRIBED AND SWORN to before me this 1 day of

May
~~April~~, 2008.

S
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A
L



[Signature]
Notary Public for California
Residing at: Alameda County
My Commission Expires: Sept 18, 2011

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into as of the nineteenth day of June, 2006 between High Mark Development, LLC ("Lessor") whose address is 1395 N W Main Street, Blackfoot, Idaho 83221, and The Children's Center Inc. (Lessee), whose address is 1619 Curlew Drive, Ammon, Idaho 83406.

RECITALS

The parties recite and declare:

- A: Lessor has a new building located at 1675 Curlew Drive, Ammon, Idaho 83406 that is acceptable to Lessee in its "as is" condition.
- B: Lessee agrees to lease from Lessor the usable area of 20,000 sq. ft. and has the option to purchase the building after year three from the actual date of commencement of the lease with the value to be determined upon receipt of MAI Appraisal.
- C: Lessee agrees to pay \$ 4,000.00 monthly for taxes lawn care, snow removal. (This figure is subject to change based on the taxes being assessed.

IN CONDITION of the mutual agreements set forth in this Lease, Lessor, and Lessee agree as follows:

1. **DEFINITIONS.** Each of the following terms shall have the indicated Meaning:
"Monthly Rent" means \$24,987.50 per calendar month for one hundred and twenty (120) months, commencing June 19, 2006 and ending June 19, 2016.
(Unless specified otherwise in the Recitals above.)

"Annual Base Rent" means Lessee agrees to pay Lessor, without prior notice of demand, as annual base rent for premise, the sum of \$299,850.00 for the first year of the lease, payable in equal payments of \$24,987.50. (Unless otherwise specified in the recitals above.)

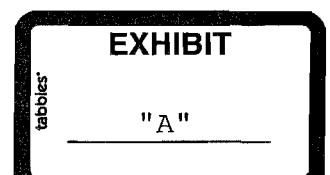
"Commencement Date" means June 19, 2006.

"Expiration Date" means June 19, 2016.

"Occupants" means Lessee and any assignee, subtenant, employee, agent, license

or invite of Lessee.

"Permitted Use" means operation of a Medical/Mental Health facility and all related



Federal Government, the State of Idaho, County of Bonneville or the City of Ammon.

"Premises" means the land and all improvements located thereon.

"Term" means the period commencing on the Commencement Date and expiring on the Expiration Date.

2. **AGREEMENT OF LEASE.** Lessor leases the premises to Lessee and Lessee leases the Premises from Lessor for the Term. Together with such rights of Pedestrian and 1 vehicular ingress and egress and vehicular parking on, over and across the premises as are reasonably necessary for the use of the premises, in accordance with the provisions set forth in, this Lease.

3. **MONTHLY RENT.** Lessee covenants to pay the Lessor the Monthly Rent at the address for Lessor set forth at the outset of this Lease or at such other place as Lessor may designate, in advance on or before the first day of each month during the Term, commencing on the Commencement date.

4. **USE.**

4.1 Lessee shall not use or occupy or permit the Premises to be used or occupied for any purpose other than for the Permitted Use, and shall not do or permit anything to be done by Lessee which may (a) increase the existing rate or violate the provisions of any insurance carried with respect to the premises, (b) create public or private nuisance, (c) violate any applicable governmental laws, ordinances, rules or regulations or any covenants, conditions or restrictions existing with respect to the premises. Lessee shall, at Lessee's sole cost, (d) use the Premises in a careful safe and proper manner, (e) keep the premises free substances, hazardous wastes, pollutants or contaminants on the Premises, except for normal and customary office or cleaning supplies kept in normal and customary quantities in accordance with applicable law,

ordinances, rules and regulations.

4.2 Covenant of Operation. Lessee shall open the business on or about the Commencement Date. On and after the Commencement date, Lessee shall operate Lessee's business in a manner customary to that industry and agreeable to Lessee.

5. UTILITIES AND SERVICES. Commencing on the date of this Lease, Lessee shall pay all initial utility deposits and fees and monthly service charges or any electricity, gas, telephone, other utility and service furnished to the Premises, Lessor shall not be liable for any loss or damage resulting from an interruption of any such service for any reason, excepting only Lessor's willful misconduct or negligence.

6. MAINTENANCE AND REPAIRS; ALTERATIONS ACCESS

6.1 Maintenance and Repairs. Lessee, at Lessee's sole cost, shall maintain every part of the Premises in good order, condition and repair and in a clean and sanitary condition.

6.2 Alterations. Lessee shall not make any change, additions or improvements to the Premises (including, without limitation, and the attachment of any fixture or equipment other than pictures and similar decoration), unless such changes, addition or improvements (a) equals or exceeds the then-current standard for the Premises set by Lessor and utilizes only new and first grade materials, (b) is in conformity with all applicable governmental laws, rules and regulations, and is made after obtaining any required permits and licenses, (c) if required by Lessor, is made after Lessee has provided to Lessor such indemnification or bonds, including, without limitation, a performance and completion bond, in such form and amount as may be reasonably satisfactory to Lessor, to protect against claims and liens for the labor performed and materials furnished, and insure the completion of any change, addition or improvement, and the same shall immediately

become property of Lessor. Lessee shall not permit any of Lessee's lenders to record any instrument which purports to encumber any portion of the premises, and shall on written demand immediately cause such to be released of record.

6.4 All real or personal property taxes associated with the leased premises shall be paid by Lessee.

6.5 The parties agree that this is a "Triple Net" lease with all costs associated with the use of this building borne by Lessee.

7. ASSIGNMENT. Lessee shall not assign, transfer, mortgage, encumber, pledge or hypothecate this Lease or Lessee's interest in this Lease, in whole or part, permit the use of the Premises or any part of the Premises by any persons other than Lessee or Lessee's employees, or sublease the Premises or any part of the Premises, without the prior written consent of Lessor. Lessor shall not unreasonably withhold or delay Lessor's consent to an assignment of his Lease or a subletting of the whole of the Premises for substantially the remainder of the term, provided that:

(a) Lessee provides to Lessor (i) any information reasonably required by Lessor with respect to the nature and character of the proposal assignee or sublease and its business, activities and intended use of the premises, (ii) any references and current financial information reasonably required by Lessor with respect to the net worth, credit and financial responsibility of the premises, (ii) any references and current financial information reasonably required by Lessor with respect to net worth, credit and financial responsibility of the proposed assignee or subtenant, and (ii) an countertop of the assignment or sublease agreement in form reasonably acceptable to Lessor;

(b) The proposed assignee or subtenant is a reputable party whose net worth,

credit and financial responsibility are, considering the responsibilities involved, reasonably satisfactory to Lessor.

No consent by Lessor to any assignment or subleasing by Lessee shall relieve Lessee of any obligation to be paid or performed by Lessee under this Lease, whether occurring before or after such consent, assignment or subleasing, but rather Lessee and Lessee's assignee or subtenant, as the case may be, shall be jointly and severally primarily liable for such payment and performance.

If this Lease is assigned or the Premises are subleased and the compensation actually received by Lessee exceeds Lessee's Monthly Rent, Lessee shall pay fifty percent (50%) of such excess to Lessor to when as received during the Term, or (c) the Premises are damaged tot he extent of twenty five percent (25%) or more of then-replacement value or the extent that it would take excess of thirty (30) days to complete the requisite repairs, Lessor may elect to either repair the damage or cancel this Lease by written notice of cancellation within thirty (30) days after such event, and on such event, and on such notice Lessee shall vacate and surrender the Premises to Lessor. Lessor shall not be required to repair and damage or to make any restoration or replacement of any furnishings, trade fixtures, equipment, merchandise and other personal property installed in the Premises by Lessee.

11. **CONDEMNATION.** If the whole of the Premises is taken throughout the exercise of the power of eminent domain or by purchase or other means of lieu of such exercise, the Lease shall automatically terminate as of the date of the taking. If the part, but not all, of the Premises is this so taken, either Lessor or Lessee may terminate this Lease by written notice within thirty (30) days after the date of such taking. If the part of the Premises is taken and the

Lease is not terminated, the Monthly Rent shall be reduced in the proportion area taken bears to the total area of the premises immediately prior to the taking, the Lessee's percentage shall be appropriately adjusted. Whether or not his lease is terminated as a consequence of Condemnation

Proceedings all damages or compensation awarded for a partial or total taking, including any award for severance damage and any sums compensating for diminution in the value of or deprivation or the leasehold estate under this Lease, shall be the sole and exclusive property of Lessor, provided that Lessee's shall be entitled to any award for the loss, or damage to, Lessee's trade fixtures, loss of business or moving expenses, if a separate award is actually made to Lessee and if the same will not reduce Lessor's award. If the Lease is not terminated pursuant to this Paragraph 11, Lessor shall promptly commence diligently pursue to completion the restoration of the Premises to substantially the condition the Premises were in immediately prior to such condemnation to the extent of the award attributable to improvements (but not to land) actually received by Lessor with respect to Premises. Lessor shall not be required any damage or to make any restoration or replacement or any furnishings, trade fixtures, equipment merchandise and other personal property installed in the Premises by Lessee.

12. LESSOR'S FINANCING OR ASSIGNMENT.

12.1 Lessee shall, within fifteen (15) days after Lessor's written request, execute such documents as may reasonably be required by Lessor to subordinate this Lease to any first deed of trust, provided that the lender relying on such subordination agrees with Lessee that Lessee shall not be disturbed in the event of foreclosure so long as Lessee is not in default under Lease and no event has occurred which with the passage of time or giving of notice or both would constitute

such default. This Lease shall be deemed prior to any mortgage or deed of trust if the lender concerned gives notice of such election of Lessee.

12.2 Any sale, assignment or transfer to Lessor's interest under this Lease or in the Premises, including any such disposition resulting from Lessor's default under a debt obligation, shall be subject to this Lease, and Lessee shall be subject to Lessor's successors and assigns and shall recognize such successors and assigns and shall recognize such successors and assigns as the Lessor under this Lease regardless of any rule of law to contrary or the absence or priority of contract.

13. DEFAULT

13.1 Default by Lessee. The occurrence of any of the following events shall constitute a default by Lessee under this Lease: (a) Lessee fails to timely pay any installment of the Monthly Rent or Lessee's share of any other sum due under this Lease, and such failure is not cured within five (5) days after written notice is given to Lessee; (b) Lessee fails to timely perform any other obligation to be performed by Lessee under the Lease; and such failure is not cured within ten (10) days after written notice is given to Lessee; provided, however, that is more than ten (10) days is reasonably required to cure such failure, Lessee shall not be default if Lessee commences such cure within such ten (10) day period and diligently such cure to completion; (c) Lessee or any guarantor files a petition in bankruptcy, becomes insolvent, has taken against such party in any court, pursuant to state or federal statute, a petition is bankruptcy or insolvency or for reorganization or appointment of a receiver or trustee, which involuntary petition is not dismissed within sixty (60) days, petitions for or enter into an arrangement for the benefit of creditors or suffers this Lease to become subject to a writ execution; or (d) Lessee vacates or abandons the Premises.

13.2 Remedies. On any default by Lessee under this Lease, Lessor may at anytime, without or limiting any other right or remedy available to Lessor,

(a) perform in Lessee's stead any obligation that Lessee has failed to perform, and Lessor shall be reimbursed promptly for any reasonable cost incurred by Lessor with interest from the date of such expenditure until paid in full at the rate of eighteen percent (18%) per annum (the "interest rate"), (b) re-enter and take possession of the Premises by any lawful means (with or without terminating this Lease), or (d) pursue any of other remedy allowed by law.

Lessee shall pay to Lessor the reasonable cost of recovering of the Premises, all reasonable costs of reletting reasonable renovation, remodeling and alteration of the premises, the amount of any commissions paid by Lessor in connection with such reletting, and all other reasonable costs and damages arising out of Lessee's default, including reasonable attorney's fees and costs.

Notwithstanding any termination of Lessee's rights under this Lease or re-entry of the Premises, the liability of Lessee for the rent payable under this Lease shall not be extinguished for the balance of the Term and Lease agrees to compensate Lessor on demand for any deficiency. No re-entry or taking possession of the Premises or other action by Lessor on or following the occurrence of any default by Lease shall be constructed as an election by Lessor to terminate this Lease or as an acceptance of any surrender of the Premises, unless Lessor provides Lease written notice of such termination of acceptance. Following a default by Lessee under this Lease, Lessor shall exercise commercially reasonable good faith efforts to mitigate its damages as required by applicable Idaho law.

13.3 Past Due Amounts. If Lessee fails to pay within five (5) days of the date due any amount required to be paid by Lessee under this Lease, such unpaid amount shall either bear

interest at 18% per annum from the due date amount to the date of payment in full, or Lessor may charge a sum of five percent (5%) of such unpaid amount as a service fee at the election of Lessor. All amounts due under this Lease are and shall be deemed to be rent or additional rent, and shall be paid out abatement, deduction offset or prior notice or demand, unless specifically provided by the terms of this Lease. Lessor shall have the same remedies for the default in the payment of any amount due under this Lease as Lessor has for a default in the payment of any amount due under this Lease as Lessor has for a default in the payment of the Monthly Rent as set forth in Paragraph 13.1 above.

13.4 Default by Lessor. Lessor shall not be in default under this Lease unless Lessor, the holder of any mortgage or deed of trust covering the premise whose same name and address have been furnished to Lessee within thirty (30) days after written notice by Lessee to Lessor and to such holder, specifically the respects in which Lessor has failed to perform such obligation. If the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for the performance or cure. Lessor shall not be in default if Lessor or such holder commences performance within such thirty (30) days period and after such commencement diligently prosecutes the same to completion. In no event may Lessee terminate this Lease or withhold the payment of rent or other charges provided for this Lease as a result of Lessor's default.

14. **EXPIRATION OR TERMINATION.** On the expiration of the Term or sooner termination of this Lease, Lessee shall, at Lessee's sole cost, (a) promptly and peaceably surrender the Premises to Lessor "broom clean" and, subject to Paragraph 10, in the same condition as when delivered to Lessee, ordinary wear and tear excepted, (b) repair any damage caused by or in connection with removal of any property from the Premises, and (c) deliver all keys to the Premises to Lessor. Before surrendering the Premises, Lessee shall, at Lessee's sole

cost, remove Lessee's removable personal property only and all other property shall, unless otherwise directed by Lessor, remain in the Premises as the property, trade fixtures, other property and laterations, additions and improvements made to the Premises by Lessee, and to restore the Premises to their condition on the commencement date.

15. SINAGE

15.1 Lessee shall advertise Lessee's business by sharing a community sign located on Premises. Any repairs and maintenance to the community sign in general shall be shared equally with all other community sign users. The risk of loss to each individual sign located on the community sign shall be borne by each individual user.

15.2 In addition subject tot he prior written approval of Lessor not to be unreasonable withheld Lessee may, at Lessee's sole cost purchase and erect one sign on the Premises designated by Lessor. Lessee shall not place or suffer to be placed on an exterior door, wall, window, or exterior location of the Premises, on any part of the inside of the Premises which is visible from the outside of the Premises any sign decoration, lettering, attachment or other advertising matter, without first obtaining Lessor's written approval, which may be withheld in Lessor's sole direction.

16. GENERAL PROVISIONS.

16.1 Force Majeure.. If either Lessor or Lessee is delayed in or prevented from the performance of any act required under this Lease by reason of acts of God, strikes, lockouts, other labor troubles, inability to procure labor or materials, restrictive laws, ordinances, rules or regulations of general applicability, riots, civil commotion, insurrection war or other reasons not the fault of the party delayed or prevented and beyond the control of such party. (Financial inability accepted), performance of the action in question shall be excused for the period of the

delay and the period from the performance of such act shall be extended for a period equivalent to

the period of such delay. The provision of this paragraph shall not, however, operate to excuse Lessee from the prompt payment of rent or other amounts required to be paid under this Lease.

16.2 Notices. Any notice or demand to be given in writing by personal service, Federal Express, or any other similar form of courier or delivery service, or mailing, in the United States mail, postage prepaid, certified, return receipt requested and addressed to such party as set forth at the outset of this Lease. Either Lessor or Lessee may change the address may change the address at which such party desires to receive notice n written notice of such change to the other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however,

that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat the giving of a notice.

16.3 Sever Ability. If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall be to any extent be invalid, the remainder of this Lease or application of such provision to persons or circumstances other than those as to which such provision to persons or circumstances other than those as to which such provision is held invalid shall not be affected by such invalidity. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

16.4 Successors. This Lease shall be binding on and shall inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. On any sale or assignment (except for purpose of security of collateral) by Lessor of the Premises or this

Lease, Lessor shall, on and after such sale or assignment, pass tot he Landlord's successor in interest

16.5 Recourse by Lessee. Anything in this Lease to the contrary notwithstanding, Lessee shall look solely to the equity of Lessor in the Premises, subject tot the prior rights of the holder of any equity of Lessor in the Premises, subject to the prior rights of the holder of any mortgage or deed of trust, for collection of any judgment (or other judicial process), requiring the payment of money by Lessor on any default or breach by Lessor with respect to any of the terms, covenant and conditions of this Lease to be observed or performed by Lessor, and no other asset of Lessor or any other person shall be subject to levy, execution or other procedure for the satisfaction of Lessee's remedies.

16.6 Rights and Remedies. No failure by any party to insist on the strict performance of any provision of this Lease or to exercise any right to remedy consequent on a breach of this Lease shall constitute a waiver of any such breach or of such provision. The rights and remedies of Lessor and Lessee shall not be mutually exclusive of any other provision. The parties confirm that damages at law may be inadequate remedy for a breach or threatened breach by any party of any provisions of this Lease. The parties' respective rights and obligations under this Lease shall be enforceable by specific performance, injunction and any other equitable remedy.

16. Authorization. Each individual executing this Lease does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he has been duly authorized to deliver this Lease in the capacity and for the entity set forth where he signs.

16.8 Attorney's Fees. If either Lessor or Lessee brings suit to enforce or interpret this

Lease, the prevailing party's reasonable attorney's fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

16.9 Miscellaneous. Exhibits referred to in this Lease and any addendums and riders attached to this Lease or referred to in any attachment shall be deemed to be incorporated in this Lease as though a part of this Lease. Lessee shall not record this Lease or a memorandum or notice of this Lease. This Lease and the exhibits, riders, and addenda, if any, attached or referred to, constitute the entire agreement between the parties. Any guaranty delivered in connection with this Lease is an integral part of this Lease and constitutes consideration given to Lessor or Lessee unless reduced to writing and signing by both parties. This Lease shall be governed by and construed and interpreted in accordance with the laws of the State of Idaho. Venue on any action arising out of this Lease shall be proper only in the District Court of Bonneville County, Idaho. If more than one person is set forth on the signature line as Lessee, their liability under this Lease shall be joint and several. All applicable provisions of this Lease shall survive the expiration of the Term or sooner termination of this Lease. Time is of the essence of each provision of this Lease. LESSOR AND LESSEE AGREE TO A JUDGE TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ANY MATTER ARISING OUT OF THIS LEASE OR THE USE AND OCCUPANCY OF THE PREMISES. THE PARTIES AGREE TO WAIVE A JURY TRIAL AND OCCUPANCY OF THE PREMISES. THE PARTIES AGREE TO WAIVE A JURY TRIAL AND ALLOW A JUDGE TO DETERMINE THE FACTS AND LAW IN ANY SUCH PROCEEDING.

16.10 Real Property Taxes. Lessor shall be responsible for all real property taxes up to

the commencement for this Lease. Thereafter, Lessee shall be responsible to pay all real property taxes. The parties agree to use the prior year's real property tax assessment as a basis for estimating the real property tax payment for the upcoming year. Once the actual amount of real property tax is assessed, Lessor will adjust the payment. All such money paid by Lessee to Lessor for real property taxes shall be included in the monthly payment to the Lessor.

17. OPTION TO RENEW LEASE. Lessee shall have the option and/or right to renew this lease for an additional ten (10) year term provided the monthly rent shall be increased or decreased by the percentage or decrease in the Consumer Price Index, as reported on or close to November 1 of each year, during the term of this Lease. The Consumer Price Index rate shall be those reported by the wall Street Journal publication or a similar publication that reports the Consumer Price Index. For example, if the Consumer Price Index increases 2% from June 2000 to June 2001, and 2% each year during the lease term for a total of 10% increase, the rental rate for the option period shall be adjusted to reflect such market increases. Lessor secures the right to review the rate of this lease after the fourth and eighth year of this lease, based on the same terms as listed above.

LESSOR
By: *Gordon A. Crave*
Title: *Manager*
Date: *6/26/06*

LESSEE
By: *Matthew F. [Signature]*
Title: *C.E.O.*
Date: *6/26/06*

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CLERK OF DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY
IDAHO

Marc J. Weinpel, Esq.
Attorney at Law
1975 Martha Avenue
Idaho Falls, ID 83404
Phone: 208.529.4300 x 115
Fax: 208.529.1627

ISB #2372

Attorney for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO IN AND FOR THE COUNTY OF BONNEVILLE

THOMAS O'SHEA and ANNE
DONAHUE O'SHEA, Trustees of the
Thomas and Anne O'Shea Trust u/d/t
DATED NOVEMBER 2, 1998;
GRANDVIEW CREDIT, LLC, A
California limited liability company;
CALEB FOOTE, an individual, KATE
LARKIN DONAHUE, an individual, JOHN
KEVIN DONAHUE, an individual, and
SAN FRANCISCO RESIDENCE CLUB,
INC., a California corporation;

Plaintiffs,

vs.

THE CHILDREN'S CENTER, INC.,
an Idaho Corporation; THE IDAHO
CHILDRENS'S CENTER, INC., an Idaho
Corporation; MATTHEW F. SMITH,
Individually and as Statutory Trustee; DALE
A. SCHNEIDER, individually, and as
Statutory Trustee; and JOHN DOES I-X,

Defendants.

Case No. CV 08-2628

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT**

The Defendants, The Children Center, Inc., an Idaho Corporation, The Idaho Children's
Center, Inc., an Idaho Corporation and Matthew F. Smith, individually, by and through their
attorney, answer Plaintiffs' Complaint as follows:

1. These Defendants admit paragraphs 2, 3, and 9 of said Complaint.

2. These Defendants deny paragraphs 1, 4, 5, 6, 7, 8 and 10-41, inclusive, of said Verified Complaint.

GENERAL DENIAL

The Defendants deny general and specifically each and every allegation set forth in the Complaint not expressly admitted herein including all allegations set forth in the associated prayer for relief.

FIRST AFFIRMATIVE DEFENSE

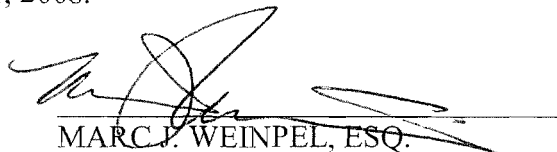
Plaintiffs fail to state a cause of action against these defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Failure to mitigate damages.

Wherefore, these defendants request that Plaintiffs' Complaint be dismissed, that they be awarded their attorney's costs and fees and for such other and further relief as the Court deems just and proper.

Dated this 5th day of November, 2008.


MARC J. WEINPEL, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a licensed attorney in Idaho, with my office in Idaho Falls, and that on the 5th day of November, 2008, I served a true and correct copy of the following-described document on the parties listed below, by facsimile transfer, mailing with the correct postage thereon, or by causing the same to be hand delivered.

DOCUMENT SERVED:

ANSWER

PARTIES SERVED:

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC
Gregory L. Crockett, Esq.
428 Park Avenue
Idaho Falls, Idaho 83405-1219

☒ Mailed ☐ Hand Delivered ☒ Faxed

MANWARING LAW OFFICE, P.A.
Kipp L. Manwaring, Esq.
381 Shoup Avenue,
Idaho Falls, Idaho 83402

☒ Mailed ☐ Hand Delivered ☒ Faxed



MARC J. WEINPEL, ESQ.

BONNEVILLE COUNTY

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC
Gregory L. Crockett, ISBN 1640
428 Park Avenue
P. O. Box 51219
Idaho Falls, Idaho 83405-1219
Telephone: 208-523-4445
Attorneys for Plaintiff

8 1 -8 PA 37

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

THOMAS O'SHEA and ANNE
DONAHUE O'SHEA, Trustees of the
Thomas and Anne O'Shea Trust u/d/t
DATED NOVEMBER 2, 1998;
GRANDVIEW CREDIT, LLC, a
California limited liability company;
CALEB FOOTE, an individual,
KATE LARKIN DONAHUE, an
individual, JOHN KEVIN
DONAHUE, an individual, and SAN
FRANCISCO RESIDENCE CLUB,
INC., a California corporation;

Plaintiffs,

vs.

HIGH MARK DEVELOPMENT,
LLC, an Idaho limited liability
company; GORDON ARAVE,
individually and as Officer of High
Mark Development, LLC;
BENJAMIN D. ARAVE, individually
and as Officer of High Mark
Development, and JOHN DOES I-X,

Defendants.

Case No. CV-08-4025

VERIFIED COMPLAINT

Fee Category: A.1.

Fee: \$88.00

COME NOW the Plaintiffs, and for cause of action against the Defendants,
complain and allege as follows:

GENERAL ALLEGATIONS

1. That Plaintiffs are collectively the owners of certain real property (hereinafter "Property") located in Bonneville County, Idaho, a professional office building, at 1675 Curlew Drive, Ammon, Idaho 83406 and particularly described as follows:

Lot 1, Block 1, Oak Ridge, Division No. 1, to the City of Ammon, Bonneville County, Idaho, according to the plat recorded thereof March 29, 2001, as Instrument No. 1044372.

2. High Mark Development, LLC ("High Mark") is an Idaho limited liability company with its principal place of business in Bingham County, Idaho.

3. The individual Defendants, Gordon Arave and Benjamin D. Arave, are residents of the State of Idaho and are owners and/or members/managers of High Mark.

4. John Does I through X are unknown and unnamed owners, shareholders, officers, directors and/or managers of High Mark, its agents or co-conspirators who are or may be liable to the Plaintiffs for damages alleged herein.

5. Sometime in 2005, Matthew F. Smith, Manager of M. Smith Enterprises, LLC, leased from Gordon Arave a professional office building at 1619 Curlew Drive, Ammon, Idaho 83406, prior to completion of the neighboring property mentioned in Paragraph 1.

6. On June 20, 2006, The Children's Center, Inc. ("The Children's Center"), Matthew F. Smith acting as President, entered into a Lease Agreement with High Mark and Gordon Arave for the lease of the property at 1675 Curlew.

7. In the late summer of 2007, High Mark began advertising the property for sale as a commercial investment with a ten (10) year triple net lease. Based partly on representations made in marketing and advertising materials, Plaintiffs understood that the building had a tenant, The Children's Center, and that High Mark's dealings with The Children's Center had been profitable and the tenant was paying rent and common area charges in a timely manner.

8. During the early fall of 2007, Plaintiffs began dealing with High Mark and its officers through its real estate listing and selling agent for the purchase of the subject Property.

9. As a precondition of Plaintiffs' purchase of the Property, Plaintiffs requested and Defendants promised that The Children's Center would complete and High Mark would deliver a Lease Estoppel Certificate ("Certificate") upon which the Plaintiffs could rely verifying the tenancy as represented in the offering information and advertising.

The October 17, 2007 Lease Estoppel Certificate.

10. At the request of the Defendants, The Children's Center completed the Certificate, dated October 17, 2007, and addressed to "the O'Shea Family Trust and its assignees ('Purchaser')". A true and correct copy of the Certificate is attached hereto

and incorporated herein as Exhibit A. The Certificate states, inter alia, that “no other agreements exist between Tenant and Landlord.”

11. Paragraph 5 of the Certificate stated that “All minimum monthly rent has been paid to the end of the current calendar month, which is September 2007, and no rent under the Lease has been paid more than one month in advance as of its due date.”

12. Paragraph 7 of the Certificate stated that “The undersigned is not in default under the Lease and is current in the payment of any taxes, utilities, or other charges required to be paid by the undersigned.”

13. The Certificate ended by stating “This certification is made with the knowledge that it will be relied upon by Purchaser, Purchaser’s lender, and any successor or assignee of Purchaser’s right to purchase the Property in connection with financing and sale of the Property and the purchase of the Property by Purchaser.”

14. Defendants provided Plaintiffs with the Certificate prior to Plaintiffs’ purchase of the Property with the intent that the Plaintiffs would rely on the Certificate. Plaintiffs did rely on the facts set forth and had Plaintiffs known the true facts would not have purchased the property.

15. On November 26, 2007, High Mark faxed to their real estate brokers information showing that, through December 31, 2007, The Children’s Center then owed \$26,221.22 in CAM charges.

16. Plaintiffs completed the purchase of the subject Property from High Mark in December of 2007 and as a part of such transaction and by way of assignment

and assumption, became the “Lessor” under that certain Lease Agreement dated June 20, 2006 between High Mark as “Lessor” and The Children’s Center, as “Lessee”.

17. In October, November, and December of 2007, The Children’s Center failed to make its lease and CAM charge payments to High Mark of \$28,987.50 per month.

The October 18, 2007 Agreement.

18. In October of 2007, Defendants and The Children’s Center agreed, contingent upon the closing of the sale of the Property to Plaintiffs, to the following arrangement:

a. Defendants would release The Children’s Center from its promissory note dated April 18, 2007 in the amount of \$199,900.00;

b. The Children’s Center would sign an estoppel certificate dated October 17, 2007;

c. The Children’s Center would release all interests it had to two options to purchase, one of which related to the Idaho Falls building which is the subject Property of this Complaint; and

d. Matthew F. Smith would sign a promissory note amending an October 1, 2005 promissory note between Defendants and M. Smith Enterprises, LLC, agreeing to pay Defendants the balance on the note on an amortized payment schedule.

A true and correct copy of said Agreement is attached hereto and incorporated herein as Exhibit B. Plaintiffs had no knowledge of this Agreement until June, 2008.

19. The Children's Center has never made a rent or CAM payment to Plaintiffs since Plaintiffs became owners of the Property and Lessors under the lease.

20. The Children's Center vacated the premises at 1675 Curlew Drive, Ammon, Idaho on or before March 1, 2008 without ever having paid rent or common area charges to Plaintiff.

The October 1, 2005 Promissory Note.

21. On October 1, 2005, Matthew F. Smith signed a Promissory Note for \$100,000 for rent past due and owing on the property at 1619 Curlew Drive. The Note was made payable the order of Gordon Arave.

A true and correct copy of said Promissory Note is attached hereto and incorporated herein as Exhibit C.

The April 18, 2007 Promissory Note.

22. On April 18, 2007, Matthew F. Smith signed a Promissory Note for \$199,900.00 on behalf of The Children's Center, for unpaid rent on the Property at 1675 Curlew Drive. The Note was made payable to the order of Jared Arave and Gordon Arave.

A true and correct copy of said Promissory Note is attached hereto and incorporated herein as Exhibit D.

The November 7, 2007 Promissory Note.

23. On November 7, 2007, legal counsel for High Mark contacted legal counsel for The Children's Center by email asking when rent and CAM charges on the Property would be paid. High Mark also drafted a promissory note and sent it to The Children's Center to satisfy the overdue rent and CAM charge obligation for October and November 2007.

24. The President and CEO of The Children's Center then signed a Promissory Note on November 7, 2007, payable to High Mark with payments beginning December 1, 2007, for the principal sum of \$57,975.00, the equivalent of two months' rent and CAM charges for lease of the subject Property. A true and correct copy of the Promissory Note is attached hereto and incorporated herein as Exhibit E.

Defendants' Fraud and Nondisclosure.

25. At all pertinent times, the Defendants represented that the Center was a bona fide paying tenant under a long-term lease and that the lease payments were current and that the lease was not in default.

26. High Mark and its officers at no time informed Plaintiffs of the financial problems of The Children's Center, its failure to make rent payments, the existence of the October 1, 2005, April 18, 2007, or November 7, 2007 promissory notes, or the October 18, 2007 agreement pertaining to the execution of the Certificate and the cancellation of indebtedness of Tenant if they signed the agreed Certificate or the fact that the Lessee was in default under the Lease.

27. The Plaintiffs only discovered the existence of the October 2007 Agreement and the subject Promissory Notes following their purchase and the tenant's abandonment of the Property.

COUNT I

BREACH OF CONTRACT

28. The Plaintiffs incorporate paragraphs 1 through 27 of this Complaint as though the same were here set forth in full verbatim.

29. On Addendum 1 of the Commercial Purchase and Sale Agreement, Defendants promised that "Seller shall deliver to Buyer and [sic] estoppels for the Tenant 10 days prior to Closing. Should the information provided on the estoppels differ from the information provided by Seller, Buyer shall have the option to terminate the Agreement and receive full refund of Earnest Money." A true and correct copy of the Commercial Purchase and Sale Agreement is attached hereto and incorporated herein as Exhibit F.

30. Defendants materially breached the Commercial Purchase and Sale Agreement by negligently and/or fraudulently misrepresenting in the Lease Estoppel Certificate that all minimum monthly rent had been paid to the end of September 2007, and that The Children's Center was current in the payment of taxes, utilities, or other charges required to be paid.

31. Plaintiffs have been substantially injured and damaged on account of Defendants' breach as, were it not for their misrepresentations, Plaintiffs would not have

purchased the Property for which The Children's Center has failed to pay rent for each and every month following Plaintiffs' purchase of the property.

32. Plaintiffs' damages are not less than the sum of \$28,987.50 per calendar month from January 2008 through the expiration of the lease term on June 19, 2016.

COUNT II

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

33. The Plaintiffs incorporate paragraphs 1 through 32 of this Complaint as though the same were here set forth in full verbatim.

34. Defendants owed Plaintiffs a duty of good faith and fair dealing in the Commercial Purchase and Sale Agreement and with regard to the information contained in the Lease Estoppel Certificate.

35. Defendants breached this implied covenant of good faith and fair dealing by negligently and/or fraudulently misrepresenting in the Lease Estoppel Certificate that all minimum monthly rent had been paid for the period at least to the end of September 2007, and that The Children's Center was current in the payment of taxes, utilities, or other charges required to be paid.

36. Plaintiffs have been substantially injured and damaged on account of Defendants' breach as, were it not for their misrepresentations, Plaintiffs would not have purchased the said property.

37. Plaintiffs' damages are not less than the sum of \$28,987.50 per calendar month from January 2008 through the expiration of the lease term on June 19, 2016.

COUNT III

NEGLIGENT AND/OR FRAUDULENT MISREPRESENTATION

38. The Plaintiffs incorporate paragraphs 1 through 37 of this Complaint as though the same were here set forth in full verbatim.

39. Defendants at all times represented to Plaintiffs that The Children's Center was in good standing in its lease payments to High Mark, and did not at any time inform Plaintiffs that The Children's Center was not making its lease payments.

40. The Defendants failed to inform Plaintiffs that The Children's Center and/or its President had signed promissory notes on October 1, 2005 and April 18, 2007 for unpaid rent.

41. The Defendants failed to inform Plaintiffs that The Children's Center failed to pay rent for October, November, or December, or that The Children's Center had signed a promissory note for the rent for October and November.

42. Defendants statements to Plaintiffs regarding The Children's Center's payment of rent were material in that Plaintiffs would not have purchased the Property but for their understanding that there was a bona fide tenant in good standing under a long-term lease; and that the lease was not in default.

43. Defendants knew, at the time of closing on the Property, that their statements to Plaintiffs regarding The Children's Center's payment of rent on the Property were false, or that the Plaintiffs relied on the existence of a bona fide lease and failure to inform the Plaintiffs of the true facts constitutes a fraudulent misrepresentation by omission and silence.

44. Defendants intended that the falsity of their statements and/or silence would be relied upon by Plaintiffs in purchasing the Property.

45. Plaintiffs were unaware at any time prior to or at closing on the Property of the existence of the October 1, 2005, April 18, 2007, and November 7, 2007 promissory notes, the October 18, 2007 agreement or that The Children's Center had not made its rent payments for October or November, or December of 2007.

46. Plaintiffs relied upon Defendants' false statements in purchasing the Property.

47. Plaintiffs' reliance was justifiable, in that there was no way for Plaintiffs to know that The Children's Center had not made its rent payments for October, November or December of 2007; and the Plaintiffs were entitled to rely on the representations set forth in the Estoppel Certificate dated October 17, 2007.

48. Plaintiffs have been substantially injured and damaged because The Children's Center has failed to pay rent under its Lease Agreement for each and every month following Plaintiff's purchase of the Property.

49. The Plaintiffs have satisfied all conditions precedent to this cause of action including all notice requirements required under the subject Lease Agreement including, but not limited to, all duties of performance required by the Lessor under the subject Lease Agreement.

50. The Defendants were negligent in their representations to the Plaintiffs; which negligence has caused the Plaintiffs' substantial damages in an amount to be proven at trial.

COUNT IV

NEGLIGENT AND/OR FRAUDULENT CONCEALMENT OF FACT MATERIAL TO TRANSACTION

51. Plaintiffs reallege paragraphs 1 through 50 of this Complaint as though the same were here set forth in full verbatim.

52. Defendants concealed or failed to disclose the fact that The Children's Center failed to pay its lease and CAM payments for October, November, and December of 2007.

53. Defendants concealed or failed to disclose the fact that The Children's Center and/or its President had signed promissory notes on October 1, 2005, April 18, 2007, and November 7, 2007, for unpaid rent.

54. Defendants' concealment of The Children's Center's nonpayment of rent was material in that Plaintiffs would not have purchased the Property but for its understanding that there was a tenant in good standing; and that lease payments would produce substantial cash flow.

55. Defendants failed to disclose material facts to Plaintiffs in an effort to deceive Plaintiffs into believing that a good paying tenant existed and therefore inducing Plaintiffs' purchase of the Property.

56. Plaintiffs at no time prior to or at the time of closing knew of the facts concealed by Defendants.

57. Plaintiffs would not have proceeded with the transaction if they had known that The Children's Center was not making its rent payments.

58. Plaintiffs have sustained damages due to Defendants' concealment or non-disclosure of The Children's Center's nonpayment of rent.

59. The Plaintiffs are entitled to a rescission of the purchase and sale and to be entirely restored to their pre-contract status and position.

COUNT V

ABATEMENT OF PURCHASE PRICE

60. Plaintiffs reallege paragraphs 1 through 49 of this Complaint as if the same were here set forth in full verbatim.

61. Plaintiffs have sustained damages due to Defendants' concealment and/or misrepresentation concerning The Children's Center's nonpayment of rent.

62. Plaintiffs' damages, to be proven at trial, should be abated from the price paid to Defendants for purchase of the Property.

COUNT IV

ATTORNEY'S FEES

63. Plaintiffs reallege paragraphs 1 through 62 of this Complaint as if the same were here set forth in full verbatim.

64. The Plaintiffs have and will continue to incur substantial attorney's fees and costs in prosecuting and bringing this action and the Plaintiffs have a right to recover their attorney's fees and costs incurred and to be incurred herein in accordance with Paragraph 25 of the Commercial Purchase and Sale Agreement and Idaho Code §§12-120 and 12-121.

65. The sum of \$15,000.00 is a reasonable attorney fee should this matter be uncontested by the Defendants herein; but the Court should award such additional and further fees and costs should this matter be contested by the Defendants or any of them.

WHEREFORE, the Plaintiffs pray the judgment, order and decree of this Court, as follows:

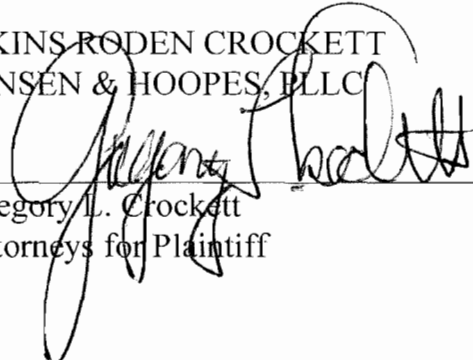
1. That Judgment be entered for the Plaintiffs and against each of the Defendants, jointly and severally;
2. That the Plaintiffs be awarded rescission of the purchase;
3. That the Plaintiffs be awarded abatement of the purchase price;
4. That the Plaintiffs be awarded their damages in an amount to be proven at trial but not less than the sum of \$28,987.50 per calendar month from January 2008 through the expiration of the lease term on June 19, 2016;

5. That the Plaintiffs be awarded their costs and reasonable attorney's fees incurred and to be incurred herein; and

6. That the Plaintiffs be awarded such other and further relief as may be just and equitable in the premises.

DATED this 8 day of July, 2008.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By 
Gregory L. Crockett
Attorneys for Plaintiff

STATE OF CALIFORNIA)
) ss.
County of Alameda)

THOMAS O'SHEA, being first duly sworn, deposes and says:

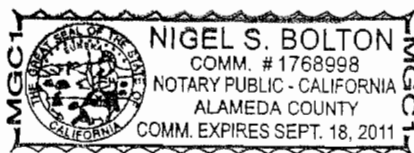
That I am the one of the Plaintiffs in the above-entitled action, that I have read the above and foregoing Verified Complaint, know the contents thereof, and that I believe the facts therein stated to be true.

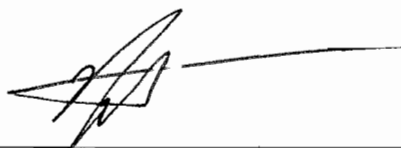

THOMAS O'SHEA

SUBSCRIBED AND SWORN to before me this 7th day of

July, 2008.

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A
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Notary Public for California
Residing at: 5111 Telegraph Ave Oakland CA 94609
My Commission Expires: Sept. 18, 2011

LEASE ESTOPPEL CERTIFICATE

October 17, 2007

This is to certify to the O'Shea Family Trust and its assignees ("Purchaser"), any successor or assignee of Purchaser, Standard Insurance Company, and any successor or assignee of the foregoing that:

1. The undersigned is the Lessee ("Tenant") under that certain Lease ("Lease") dated June 19, 2006 by and between High Mark Development, LLC, an Idaho limited liability company, as Landlord ("Landlord"), and The Children's Center, Inc., an Idaho corporation, as Tenant, covering those certain premises containing approximately 20,000 net rentable square feet, commonly known as 1675 Curlew Drive, Ammon, Bonneville County, State of Idaho, and including the right to use of certain common areas for parking, and ingress and egress ("Premises or Property").

A true, complete, and accurate copy of the Lease and all amendments thereto are attached hereto as Exhibit 1. The term of the Lease commenced on June 19, 2006, and terminates on June 19, 2016 and is renewable at the option of Tenant for an additional ten (10) year term.

2. The Lease is in full force and effect and has not been assigned, modified, supplemented, altered or amended in any respect (except as indicated following this sentence) and is the only lease or agreement between the undersigned and Landlord affecting the Premises. If none, state "none".

The Lease was amended on October 17, 2007 by redacting and releasing the option to purchase stated in Recital B of the Lease. As a result of this amendment, Recital B of the Lease, in its entirety, reads as follows: "Lessee agrees to lease from Lessor the usable area of 20,000 sq. ft." See Exhibit 1 hereto.

3. The undersigned has accepted possession and now occupies the Premises and full rent is accruing under the Lease. The improvements, if any required to be furnished under the Lease, have been completed and accepted by Tenant. Any required payments, allowances or contributions from Landlord to Tenant have been paid in full or credited in full to Tenant.

4. As of the date hereof, Landlord is not in default in the performance of its obligations under the Lease. Tenant is not aware of the existence of any condition which, with the giving of notice, the passage of time, or both, would constitute a default under the Lease on the part of Tenant or Landlord. Tenant acknowledges that it is aware of its obligations under the Lease as a "Triple Net Lease" to reimburse Landlord for all costs associated with the use of the building, which currently total \$4,000 per month. Included in this \$4,000 is a property management fee of approximately \$500 per month, insurance costs totaling approximately \$400 per month, plus all real property taxes, lawn care, and snow removal. Tenant acknowledges that Landlord's sole responsibility is to replace the roof and foundations if needed. Tenant acknowledges that it carries public liability insurance with respect to the

EXHIBIT

A

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FAX No. 5291627

P. 003

business operated by Tenant in which the combined single limit is not less than \$1,000,000 per accident or incident.

5. All minimum monthly rent has been paid to the end of the current calendar month, which is September 2007, and no rent under the Lease has been paid more than one month in advance of its due date. The current minimum monthly rent is \$24,987.50. The Lease provides for potential rental increases in 2010 and 2014. Tenant currently occupies the Premises, which totals approximately 20,000 square feet.

6. Tenant has no right or option to terminate or cancel the Lease, except as follows: If none, state "none."

None.

7. The undersigned is not in default under the Lease and is current in the payment of any taxes, utilities, or other charges required to be paid by the undersigned. Tenant has no present right to any offsets, credits or deductions against rent payable under the Lease, and Tenant knows of no existing defenses against the enforcement of the Lease by Landlord. Tenant disclaims any and all right, title and interest to the Premises or Property except those rights granted under the Lease. This estoppel certificate supersedes any prior estoppels provided to Landlord.

8. Tenant has not entered into any sublease, assignment or other agreement transferring any of its interest in the Lease or the Premises other than as set forth herein.

9. The amount of the security deposit presently held under the Lease is \$0.

10. No actions, whether voluntary or otherwise, are pending against the undersigned under the bankruptcy laws of the United States or any state thereof.

This certification is made with the knowledge that it will be relied upon by Purchaser, Purchaser's lender and any successor or assignee of Purchaser's right to purchase the Property in connection with financing and sales of the Property and the purchase of the Property by Purchaser.

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FAX No. 5291627

P. 002

EXECUTED under seal this 18TH day of October, 2007.

TENANT:

THE CHILDREN'S CENTER, INC., an Idaho corporation

Matthew F. Smith

By: MATTHEW F. SMITH

Its: PRESIDENT

STATE OF IDAHO)

) ss.

COUNTY OF BONNEVILLE)

On 10/18/2007 before me, MARC J. WEINPEL, personally appeared MATTHEW F. SMITH personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

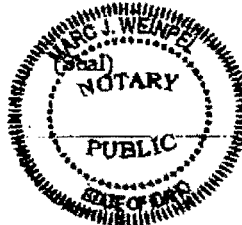
WITNESS my hand and official seal.

Marc J. Weinpel

NOTARY PUBLIC

My Commission Expires:

06/16/2011



10/24/2007 WED 10:04 FAX 208 3496 Arave Const/Western Real

002/005

TUE/OCT/23/2007 12:51 PM THE CHILDRENS CENTER FAX No. 5291627

P. 002

WOOD CRAPO LLC

ATTORNEYS AT LAW

500 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UTAH 84111TELEPHONE (801) 366-6060
FACSIMILE (801) 366-6061MARY ANNE Q. WOOD
DAVID J. CRAPO
LARRY S. JENNINGS
DARRYL J. LEE
KATHLEEN OGDEN BALMFOURTH
RICHARD J. ARMSTRONG
LANCE D. RICH
LAYNE T. SMITH
RACHEL A. ASBURYPAMELA B. HUNSAKER
JOI GARDNER PEARSON
STEPHEN G. WOOD
OF COUNSEL

October 18, 2007

*Via E-mail and Fax*Marc J. Weinpel, Esq.
The Children's Center, Inc.
1675 Curlew Drive
Idaho Falls, Idaho 83406
E-mail: mweinpel@thechildrenscenter.us
Facsimile: 208-529-1627

Dear Mr. [redacted]:

Pursuant to our discussions this morning, I am forwarding this letter to you to memorialize the agreement between our respective clients, High Mark Development, LLC (hereinafter referred to as "Landlord") and The Children's Center, Inc. (hereinafter referred to as "Tenant"), as well as the other individuals and entities subject to the agreement we reached.

AGREEMENT

The parties agree as follows:

1. Jared Arave and Gordon Arave agree to release Tenant from the promissory note dated April 18, 2007 in the amount of \$199,900.00.
2. Tenant agrees to immediately sign the estoppel certificate dated October 17, 2007.
3. Tenant agrees to release any and all interests it has to two options to purchase set forth in two lease agreements. One agreement is with Landlord and relates to the Idaho Falls building, and the other agreement is with Crestwood Enterprises, LLC, and relates to the Pocatello building.
4. M. Smith Enterprises, LLC agrees to sign a promissory note amending the October 1, 2005 promissory note between Landlord and M. Smith Enterprises, LLC, agreeing to pay the note on an amortized payment schedule.

EXHIBIT

tabbies

B

10/23/2007 TUE 13:10 [JOB NO. 9701] 002

10/24/2007 WED 9:59 [JOB NO. 9711] 002

10/24/2007 WED 10:05 FAX 208-555 3496 Arave Const/Western Real

003/005

TUE/OCT/23/2007 12:52 PM THE CHILDRENS CENTER

FAX No. 5291627

P. 003

Marc J. Weipel, Esq.
 October 18, 2007
 Page 2

5. All parties to this letter agreement acknowledge and agree that this Agreement is contingent upon the closing of the sale of the Idaho Falls building on or about November 16, 2007. If the sale is not closed on or about November 16, 2007, this Agreement will terminate and the parties returned to the *status quo* that existed immediately prior to the execution of this Agreement.

If we are in agreement, please have your client sign at the appropriate spaces, and forward me a copy of the signature page for my records.

Thank you for your work on this.

Sincerely,

WOOD CRAPO LLC

Richard J. Armstrong

AGREED AND ACCEPTED this 18th day of October, 2007.

HIGH MARK DEVELOPMENT, LLC

By: Gordon Arave

Its: Manager/owner

Gordon Arave
 Gordon Arave

Jared Arave
 Jared Arave

THE CHILDREN'S CENTER, INC.

By: Matthew F. Smith

Its: President

M. SMITH ENTERPRISES, LLC

By: Matthew F. Smith

Its: President

EXHIBIT **B****PROMISSORY NOTE****\$100,000.00****Blackfoot, Idaho****October 1, 2005**

For Value received, the undersigned promises to pay to the order of **Gordon Arave**.

At such place as the holder may designate in writing, **THE PRINCIPAL SUM OF \$100,000.00** together with interest beginning on 6/1/2005 at the rate of 10 percent per annum, lawful money of the United States of America in installments as follows:

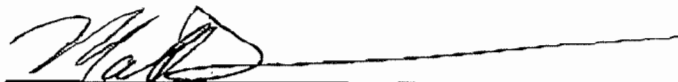
Payments due monthly for interest only on the first of each month thereafter for a period of 59 months with a balloon payment of \$100,833.33 Oct. 1, 2010. Monthly payments due on the first will be for the amount of \$833.33.

Further provided that there shall be no penalty for prepayments.

If default were made in the payment of any installment under this note, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this note. The failure of the holder of this note to enforce its rights upon default in any of the terms of this note shall not constitute a waiver of any such right in the event of a subsequent default. If suit is instituted to collect this note or any portion thereof, I agree to pay, in addition to the costs and disbursements as are allowed by law, such additional sums as the court may adjudge reasonable on attorney's fees in such suit. The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, protest, and notice of protest and of non-payment of this notice.

The indebtedness evidenced by this Note is secured by a Deed of Trust of even date, and reference is made to the Deed of Trust for rights as to acceleration of the indebtedness evidenced by this note.

Due: 10/1/2010



M. Smith Enterprises LLC
Matt Smith, Manager

Promissory Note

Page 1 – \$199,900.00

1. Initial information

Date of Note: April 18, 2007.

Maturity Date: May 3, 2014.

Principal Sum: \$199,900.00

Annual Interest Rate: 6.75% per annum

Monthly Payments: Debtor shall make 84 equal monthly payments of \$2,992.65 to Creditor. The first monthly payment shall be due on May 3, 2007. A like monthly payment shall be made on the 1st day of each month thereafter to Lender. The entire principal and interest shall be paid in full no later than May 3, 2014.

Made at: Idaho Falls, Idaho

Debtor/Borrower: The Children's Center Inc. of Idaho Falls, Idaho

Creditor/Lender/Holder: Jared Arave & Gordon Arave of Blackfoot, Idaho.

2. Background

Lender and Borrower have entered into a loan Agreement dated April 18, 2007. Lender has agreed to lend to Borrower \$149,925.00, by means of rent deferral for the months of September, 2006 thru January, 2007. Borrower has received \$149,925.00, by means of rent deferral, and additional cash to the sum of \$49,975.00, and gives Lender this Promissory Note in exchange. By signing this promissory note Lender agrees that all past promissory notes and debt for deferred rent payments owed by Borrower to High Mark Development, LLC, Gordon Arave, or any entity in which Gordon Arave has an interest in, is cancelled and replaced by this promissory note.

3. Borrower's promise to repay

In return for the consideration of the transfer of the funds to the Corporation, Borrower promise to pay to order of Lender the Principal Sum plus interest in money of the United States of America. Lender may transfer this note; and Lender or anyone to whom this note is transferred is called the "holder."

4. Interest

Interest will be charged on the unpaid Principal Sum at the annual interest rate of 6.75% until the full amount of the principal has been paid. The interest will accrue daily and start on the Date of Note. The Annual Interest Rate required by this section is the rate before default. If there is a default, then the Default Interest Rate will apply from the date of the default until the default is cured. The Default Interest Rate is 8% per annum.

5. Payments

Beginning on May 3, 2007 and on the 1st day of the month for each following month until May 3, 2014, Borrower will make Monthly principal and interest payments as described in section 1. On May 3, 2014, Borrower will pay all amounts still owing under this note. Borrower may make a full prepayment without penalty prior to May 3, 2014. All payments whenever made will be applied in the following order: 1) interest, and 2) principal. If Borrower makes a prepayment, that will not excuse Borrower from making any other payments due under this note.

Page 2 – \$199,900.00

Borrower will make all payments to Lender's address specified above, or at a different place if required by the Lender or holder.

6. Borrower's failure to repay**Default**

Borrower will be in default if:

Borrower does not make any payments under this note when due; Borrower (a) makes an assignment for the benefit of creditors, (b) files a petition in bankruptcy, (c) is adjudicated insolvent or bankrupt under the federal bankruptcy code as now or later in effect, or under any applicable state insolvency law; or if there is started against Borrower any bankruptcy, insolvency or other similar proceeding which has not been dismissed by the 60th day after the date on which the proceeding was started, or Borrower consents to or approves of any such proceeding or the appointment of any receiver for us or any substantial part of Borrower's property, or the appointment of any such receiver is not discharged within 60 days.

Acceleration

If Borrower is in default, the holder may send Borrower a written notice stating that if Borrower does not pay the overdue amount by a certain date, the holder may require Borrower to pay immediately the full amount of unpaid principal and all the accrued interest. That date must be at least sixty days after the date on which the notice is delivered or mailed.

Preservation of holder's rights

After default, even if the holder does not require Borrower to pay immediately the full amount of unpaid principal and all of the interest on the note, the holder will still have the right to do so if Borrower remains in default.

Payment of holder's costs and expenses

If Borrower is in default, the holder will have the right to be repaid by Borrower for all of its costs and expenses in enforcing this note to the extent not prohibited by applicable law. Those expenses include, but are not limited to, reasonable attorney's fees.

7. Giving the notices

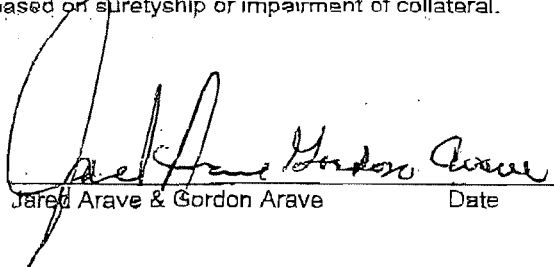
Unless applicable law requires a different method, any notice that must be given to Borrower under this note will be given by delivering it or by mailing it by first class mail to Borrower at the address shown at the beginning of this note, or at a different address if Borrower gives the holder a notice of its different address using the procedure in the next paragraph. Any notice that must be given to the holder under this note (such as, for example, a notice of different address) will be given by mailing it by first class mail to the holder at the address stated in section 1 above, or at a different address if Borrower is given a notice of that different address using the procedure in the paragraph immediately above.

8. Waivers

Borrower and any other person who has obligations under this note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the holder to demand payment of amounts due. "Notice of dishonor" means the right to require the holder to give notice to other persons that amounts due have not been paid. Borrower waives defenses based on suretyship or impairment of collateral.


Matthew F. Smith, President Date 4/18/07

The Children's Center Inc.


Jared Arave & Gordon Arave Date 4/18/07

PROMISSORY NOTE

Principal Amount: \$57,975.00

Date of Note: November 7, 2007

FOR VALUE RECEIVED, THE CHILDREN'S CENTER, INC. (hereinafter "Debtor"), promises to pay to the order of HIGH MARK DEVELOPMENT, LLC ("Payee"), at the address set forth below or at such other place as Payee shall have designated to Debtor in writing, the principal sum of Fifty Seven Thousand Nine Hundred Seventy Five Dollars and Zero Cents (\$57,975.00). Interest shall accrue on such principal sum at the rate of ten percent (10%) per annum until paid.

This Note shall be paid as follows: Payments are due monthly for principal and interest in the amount of \$2,657.19 beginning December 1, 2007 for a period of 24 months, with payments due on the first of each month until paid.

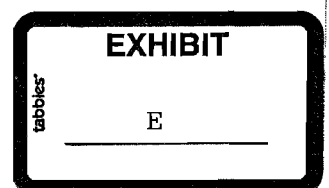
All payments received under this Note shall be made in the form of lawful money of the United States of America.

This Note may be prepaid by Debtor, in whole or in part, without premium or penalty. All prepayments shall first be applied to accrued interest and then to the unpaid principal balance hereof.

In the event of (a) any default in the payment of any principal or interest due under this Note when due and payable, or (b) Debtor files a petition or any proceeding is commenced by or against Debtor for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of Debtor, readjustment of indebtedness, reorganizations, composition or extensions, or Debtor becomes insolvent, then, and in any of such events, the whole principal sum of this Note shall, at the option of the holder of this Note, become immediately due and payable without notice or demand, and the holder of this Note shall have and may exercise any and all of the rights and remedies provided herein or at law. Interest shall run on any amount in default under this Note at the rate of eighteen percent (18%) per annum.

If Payee retains an attorney for collection of this Note, or if any suit or proceeding is brought for the recovery or protection of all or any part of the indebtedness evidenced by this Note, then Debtor agrees to pay on demand all costs and expenses of the suit or proceeding, or any appeal thereof, incurred by Payee, including, without limitation, reasonable attorney fees. If Payee retains the services of a collection agency to collect any amount in default, Debtor agrees to pay reasonable collection costs, plus any reasonable attorney fees incurred by Payee.

Debtor waives presentment, notice of dishonor, notice of acceleration and protest, and assents to any extension of time with respect to any payment due under this Note and to the addition or



release of any party. No waiver of any payment or other right under this Note shall operate as a waiver of any other payment or right.

This Note shall be governed by and construed pursuant to the laws of the State of Idaho.

THE CHILDREN'S CENTER, INC.

A handwritten signature in black ink, appearing to read "Matt Smith", is written over a horizontal line.

By: Matt Smith

Its: Chief Executive Officer

Address of Payee:

High Mark Development, LLC
3494 NW Main Street
Blackfoot, Idaho 83221

RE-23 COMMERCIAL PURCHASE AND SALE AGREEMENT JULY, 2007 EDITION PAGE 1 OF 7



RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF
YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



ID# 1992

DATE August 9, 2007

LISTING AGENCY High Desert Realtors Office Phone #208-535-0350 Fax #

Listing Agent Paul Fife E-Mail pfife@highdesertrealtors.com Phone #

SELLING AGENCY Needs Real Estate Office Phone #208-409-8565 Fax #

Selling Agent Jeff Needs E-Mail needsrealestate.com Phone #

1. **BUYER:** O'Shea Family Trust and or Assigns (Hereinafter called "BUYER")
agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"
COMMONLY KNOWN AS 1675 Curlew City Ammon
County, Bonneville ID, Zip 83404 and legally described as: West, 50,403.89 sq. ft. Lot 1, Block 1, Oak
Ridge Division, City of Ammon

OR Legal Description Attached as addendum # (Addendum must accompany original offer.)

2. \$ 3,700,000.00 **PURCHASE PRICE:** Three million seven hundred thousand DOLLARS,
payable upon the following **TERMS AND CONDITIONS** (not including closing costs):

3. **FINANCIAL TERMS:** Note: A+C+D must equal the total purchase price.

\$ 50,000.00 (A). **EARNEST MONEY:** BUYER hereby deposits Fifty thousand DOLLARS as Earnest
Money evidenced by: ☐ cash ☐ personal check ☐ cashier's check ☐ note (due date):
☒ otherwise transfer Earnest Money to be deposited in trust account ☐ upon receipt, or ☒ upon acceptance by all parties
and shall be held by: ☐ Listing Broker ☐ Selling Broker ☒ Other Pioneer Title, Boise for the benefit of the parties hereto. The
responsible Broker shall be Doug Page

(B). **ALL CASH OFFER** ☐ NO ☒ YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE
SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within business days from the date of acceptance of
this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes,
but is not limited to a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be
sold.

(C). **FINANCING:**

- ☐ Additional financial terms are specified under the heading "OTHER TERMS AND CONDITIONS" (Section 5 below)
☐ Additional financing terms are contained in a financing addendum of same date, and attached hereto, and signed by both parties.

\$ 3,650,000.00 (D). **APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING:** (Not including closing costs) Cash at closing to
be paid by BUYER at closing in GOOD FUNDS, includes cash, electronic transfer funds, certified check, or cashiers check.

4. **SECTION 1031 TAX DEFERRED EXCHANGE:** By checking either or both of the boxes that follow, it is hereby acknowledged by the parties
that the ☒ Buyer, ☐ Seller intends to use the purchase and sale of the Premises as an integral part of a tax deferred like-kind exchange as
allowed under Section 1031 of the Internal Revenue Code (the "Exchange"). For purposes of this paragraph, the party participating in the
Exchange shall be identified as the "Exchanger." If either box above is checked, then the parties recognize that a material part of the
Exchanger's consideration for entering into the agreement for the purchase and sale of the Premises is the successful completion of the
exchange. The parties agree to assist each other in the completion of such exchange by cooperating with each other by signing any and all
relevant documents provided that the party not doing the Exchange shall not incur any liabilities, costs, fees, or taxes in excess of those which
that party would have incurred had this transaction not been an Exchange.

BUYER'S Initials () Date

SELLER'S Initials () Date

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RE-23 COMMERCIAL PURCHASE AND SALE AGREEMENT JULY, 2007 EDITION PAGE 1 OF 7

RE 23 PURCHASE & SALES AGREEMENT FOR COMMERCIAL REAL ESTATE, JULY, 2007 EDITION PAGE 2 OF 7

PROPERTY ADDRESS: 1675 Curlew

Ammon

ID# 1992

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing See Addendum #1

6. INCLUDED ITEMS:

(a) All existing fixtures and fittings that are attached to the premises are included in the purchase price (unless excluded below) and shall be transferred free of liens. These include but are not limited to, all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks, all water systems, wells, spring water that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein.

(b) Irrigation fixtures and equipment, and any and all, if any, water and water rights, and any and all, if any, ditches and ditch rights that are appurtenant thereto that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein.

(c) Other items specifically included in this sale: none

(d) Items specifically excluded in this sale: Tenants personal property

7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by ☒ warranty deed ☐ special warranty deed or ☐ deed, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.

(A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction ☒ SELLER or ☐ BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have 5 business day(s) from receipt of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within 5 business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). TITLE COMPANY: The parties agree that pioneer Title Company located at Boise shall provide the title policy and preliminary report of commitment.

BUYER'S Initials (X) Date _____

SELLER'S Initials (X) Date _____

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RE-23 COMMERCIAL PURCHASE AND SALE AGREEMENT JULY, 2007 EDITION PAGE 2 OF 7

PROPERTY ADDRESS: 1675 Curlew

Ammon

ID# 1992

(C). **STANDARD COVERAGE OWNER'S POLICY:** SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. **The risk assumed by the title company in the standard coverage policy is limited to matters of public record.** BUYER shall receive a ILTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct closing agency in writing and pay any increase in cost unless otherwise provided herein.

(D). **EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy):** The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. **This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.**

9. INSPECTION/DUE DILIGENCE:

(A). BUYER shall have the right to conduct due diligence inspections, investigations, tests, surveys and other studies at **BUYER'S expense** unless otherwise indicated below or agreed upon in writing by the parties. BUYER chooses ☒ to have inspection ☐ not to have inspection. If BUYER chooses not to have inspection skip the remainder of this section 9. BUYER shall, within 20 business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER's own selection of professionals with appropriate qualifications to conduct inspections of the entire premises. The closing of this transaction is conditioned upon BUYER's satisfaction or waiver of the following contingencies.

INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A	INSPECTION ITEM; COSTS PAID BY	BUYER	SELLER	SHARED EQUALLY	N/A
Environmental inspection (Phase I)				<input checked="" type="checkbox"/>	Hazardous Waste report(s)				<input checked="" type="checkbox"/>
Environmental inspection (Phase II)				<input checked="" type="checkbox"/>	Other substances hazardous to human health (e.g. mold, radon, asbestos, etc.)				<input checked="" type="checkbox"/>
Environmental inspection (Phase III)				<input checked="" type="checkbox"/>	Review of seller's relevant business documents				<input checked="" type="checkbox"/>
Survey				<input checked="" type="checkbox"/>	Utilities and Zoning Studies				<input checked="" type="checkbox"/>
Water Rights				<input checked="" type="checkbox"/>	Pest, dry rot & structural inspection(s)				<input checked="" type="checkbox"/>
Flood Zone Hazard				<input checked="" type="checkbox"/>	Compliance with American With Disabilities Act				<input checked="" type="checkbox"/>
Soil(s) and Percolation Test(s)				<input checked="" type="checkbox"/>	Well/Septic				<input checked="" type="checkbox"/>
Survey				<input checked="" type="checkbox"/>					

☒ The following documents and materials shall be provided by the SELLER to the BUYER as part of the BUYER'S inspection/due diligence:

Income and expense statements for the 2006, Year-to-date 2007, thrigh July, income and epense statement, aged receivables report, copies of any appraisal or phase 1 reports, list of all warranties on the building and copy of the lease.

(B). SATISFACTION/REMOVAL OF INSPECTION DUE DILIGENCE CONTINGENCIES:

1). If BUYER **does not** within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER **does** within the strict time period specified give to SELLER written notice of disapproved items, **BUYER shall provide to SELLER pertinent section(s) of written inspection reports.** SELLER shall have 3 business day(s) in which to **respond in writing.** The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. **This will remove the BUYER'S inspection contingency.**

BUYER'S Initials (X) Date _____SELLER'S Initials (X) Date _____

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ID# 1992

3). If SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 3 business days that they will not continue with the transaction and demand the return of their Earnest Money.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items with SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the premises available for all inspections. BUYER shall keep the premises free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. **ADDITIONAL COSTS:** Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. **SELLER agrees to pay up to \$** _____ **of lender required repair costs only.** BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

COSTS	BUYER	SELLER	SHARED EQUALLY	N/A	COSTS	BUYER	SELLER	SHARED EQUALLY	N/A
Appraisal fee				X	Flood certification /tracking fee				X
Long term Escrow fees				X	Title Ins. Standard Coverage owners policy		X		
Closing fee			X		Lenders Extended Policy				X
Additional Title Ins.				X	Attorney contract preparation and/or review fee				X
Water Rights				X					
				X					

11. **ESCROW/COLLECTION:** If a long-term escrow/collection is involved, then the escrow/collection holder shall be _____. Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.

12. **RESIDENTIAL PROPERTY CONDITION DISCLOSURE:** Idaho Code § 55-2501 *et seq.* requires that any person intending to transfer "residential real property" deliver to the transferee or his agent, within ten (10) days of the acceptance of an offer to purchase, a SELLER PROPERTY DISCLOSURE FORM. "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use. The property ☐ is ☒ is not subject to the Property Condition Disclosure Act.

13. **LEAD-BASED PAINT DISCLOSURE:** Properties that meet the criteria of "target housing" require certain disclosures regarding lead-based paint hazards. The term lead-based paint hazard is intended to identify lead-based paint and all residential lead-containing dusts and soils **regardless of the source of the lead.** Pursuant to 42 USCA § 4851 *et seq.*, "target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. A "residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons. "Residential real property" means real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons.

The subject property ☐ is ☒ is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home," (b) receipt of the Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than _____ or the contingency will terminate, (d) that BUYER hereby ☐ waives ☐ does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the property, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is cancelled under this clause, BUYER's earnest money deposit will be returned to BUYER.

BUYER'S Initials (_____ X _____) Date _____

SELLER'S Initials (_____ X _____) Date _____

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14. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

15. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs): BUYER is responsible to obtain and review a copy of the CC&Rs (if applicable). BUYER has reviewed CC&Rs ☐ Yes ☒ No.

16. RISK OF LOSS: Prior to the closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.

17. CONDITION OF PREMISES AT CLOSING: Upon expiration of the Inspection/Due Diligence period and thereafter, BUYER agrees to purchase the Premises in **as-is-condition**, where is, with all faults and with no further repairs required unless otherwise agreed upon by the parties in writing. BUYER will assume all obligations with respect to the Premises. SELLER shall maintain the Premises until the closing in its present condition, ordinary wear and tear excepted.

18. CLOSING AGENCY: The Closing Agency for this transaction shall be Pioneer Title located at Boise, ID.

19. CLOSING DATE: On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to complete the sale. The closing date shall be no later than September 15, 2007. "Closing Date" means the date on which all documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.

20. POSSESSION/PRORATION: BUYER shall be entitled to possession ☒ UPON CLOSING or ☐ DATE TIME ☐ AM ☐ PM. Taxes and water assessments (using the last available assessment as a basis), rents, insurance premiums, interest and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or date of closing. Any tenant deposits held by SELLER shall be credited to BUYER at closing.

21. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

22. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

23. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code §73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

24. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker, provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter. **If SELLER defaults,** having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

BUYER'S Initials (X) Date

SELLER'S Initials (X) Date

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PROPERTY ADDRESS: 1675 Curlew

Ammon

ID# 1992

25. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

26. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

27. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

28. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

29. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sales data from this transaction, including selling price and property address to the local Association/Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's broker.

30. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☒ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☐ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

31. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

32. ENTIRE AGREEMENT: This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

BUYER'S Initials (_____) Date _____

SELLER'S Initials (_____) Date _____

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RE-23 PURCHASE & SALES AGREEMENT FOR COMMERCIAL REAL ESTATE, JULY, 2007 EDITION PAGE 7 OF 7

PROPERTY ADDRESS: 1675 Curlew

Ammon

ID# 1992

34. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) August 13, 2007 at (Local Time) 6:00 ☐ A.M. ☒ P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

35. BUYER'S SIGNATURES:

☒ SEE ATTACHED BUYER'S ADDENDUM(S): 1 (Specify number of BUYER addendum(s) attached.)

BUYER Signature _____

BUYER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

BUYER Signature _____

BUYER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

36. SELLER'S SIGNATURES: On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

☐ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

☐ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

SELLER Signature _____

SELLER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

SELLER Signature _____

SELLER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____

BUYER'S Initials (_____) Date _____

SELLER'S Initials (_____) Date _____

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RE-23 COMMERCIAL PURCHASE AND SALE AGREEMENT JULY, 2007 EDITION PAGE 7 OF 7

Company: High Desert Realtors

Provided by: Paul Fife

79

S/N: PCF5-06353

Printed using Software from Professional Computer Forms Co. v. 6/07



RE-11 ADDENDUM # 1 (1,2,3, etc.)



Date: August 9, 2007

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is an **ADDENDUM** to the ☒ Purchase and Sale Agreement ☐ Other _____
 2 ("Addendum" means that the information below is added material for the agreement {such as lists or descriptions} and/or means the form is being used
 3 to change, correct or revise the agreement {such as modification, addition or deletion of a term}).
 4

5 **AGREEMENT DATED:** August 8, 2007 ID # 1992

6 **ADDRESS:** 1675 Curlew

7 **BUYER(S):** O'Shea Family Trust and or Assigns

8 **SELLER(S):** High Mark Development LLC

9 The undersigned parties hereby agree as follows:

10 Seller to provide following: Indemnification to Buyer from losses, including reasonable
 11 attorney/appraisal fees, that Buyer may incur by having to sale the property to Tenant, should Tenant
 12 wish to purchase the Property as provided for in the lease.
 13
 14

15 Estoppels: Seller shall deliver to Buyer and estoppel for the Tenant 10 days prior to Closing.
 16 Should the information provided on the estoppel differ from the information provided by Seller, Buyer
 17 shall have the option to terminate the Agreement and receive full refund of Earnest Money. the form of
 18 Estoppel shall be attached to the Agreement.
 19

20 As-Built and Construction Drawings: Five (5) days prior to closing, Seller to deliver to Buyer copies
 21 of all as-built and construction drawings for base building and tenant improvement construction.
 22

23 Other Documents: Seller to utilize best efforts to deliver all property financial, operation, lease
 24 and construction documents to Buyer within thirty (30) days after closing, where feasible, Seller shall
 25 provide electronic copies of these materials as well.
 26

27 Buyer to approve warrant deed during inspection period.
 28
 29
 30

31
 32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
 33 Addendums or Counter Offers, these terms shall control. **All other terms of the Purchase and Sale Agreement including all prior**
 34 **Addendums or Counter Offers not modified by this ADDENDUM shall remain the same.** Upon its execution by both parties, this
 35 agreement is made an integral part of the aforementioned Agreement.
 36

37 **BUYER:** _____

Date: _____

38 **BUYER:** _____

Date: _____

39 **SELLER:** _____

Date: _____

40 **SELLER:** _____

Date: _____

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BONNEVILLE COUNTY
CLERK

8 SEP 12 P4:57

WOOD CRAPO LLC
 Richard J. Armstrong, ISBN 5548
 500 Eagle Gate Tower
 60 East South Temple, Suite 500
 Salt Lake City, Utah 84111
 Telephone: (801) 366-6060
 Facsimile: (801) 366-6061

Attorneys for Defendants

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 STATE OF IDAHO, COUNTY OF BONNEVILLE**

THOMAS O'SHEA and ANNE DONAHUE
 O'SHEA, Trustees of the Thomas and Anne
 O'Shea Trust u/d/t DATED NOVEMBER 2,
 1998; GRANDVIEW CREDIT, LLC, a
 California limited liability company; CALEB
 FOOT, an individual, KATE LARKIN
 DONAHUE, an individual, JOHN KEVIN
 DONAHUE, an individual, and SAN
 FRANCISCO RESIDENCE CLUB, INC., a
 California corporation,

Plaintiffs,

v.

HIGH MARK DEVELOPMENT, LLC, an
 Idaho limited liability company; GORDON
 ARAVE, individually and as Officer of High
 Mark Development, LLC; BENJAMIN D.
 ARAVE, individually and as Officer of High
 Mark Development,

Defendants.

***ORDER SHORTENING TIME TO
 FILE AND HEAR MOTION***

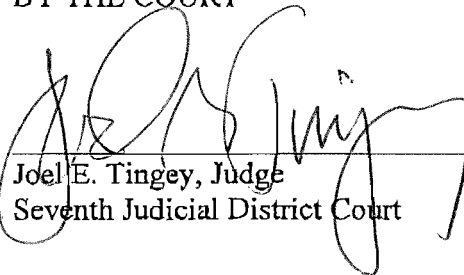
Case No. CV-08-4025

Judge Tingey

This matter came before the Court on Defendants' motion to shorten the time allowed for filing and hearing Defendants' motion to quash the subpoena duces tecum issued by Plaintiffs and served on witness Paul Fife ("Fife Subpoena"). Pursuant to Idaho R. Civ. P. 7(b)(3)(A), and for good cause shown, the Court hereby ORDERS, ADJUDGES, AND DECREES, that the time constraints set forth in Idaho R. Civ. P. 7(b)(3)(A) for filing and hearing a written motion, are shortened so as to allow Defendants to file their motion to quash the Fife Subpoena and to have the motion heard by this Court on September 25, 2008 at 9:00 a.m.

DATED this 12 day of September, 2008.

BY THE COURT

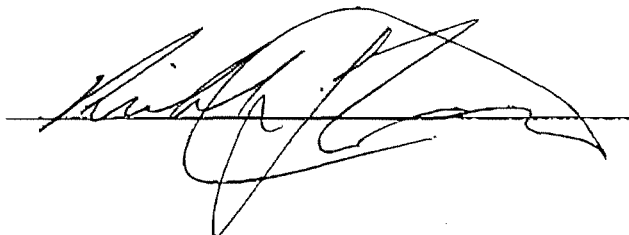


Joel E. Tingey, Judge
Seventh Judicial District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of September, 2008, a true and correct copy of the foregoing **ORDER** was served by facsimile and by U.S. mail, postage prepaid, to the following:

HOPKINS RODEN CROCKETT HANSEN & HOOPES, PLLC
Gregory L. Crockett
Sean J. Coletti
428 Park Avenue
P.O. Box 51219
Idaho Falls, Idaho 83405-1219

A handwritten signature in black ink, appearing to read "Mark O'Shea", is written over a horizontal line.

S:\WP\DATA\PLEADING\HIGH MARK O'SHEA\ORDER-MOTION TO SHORTEN TIME.wpd

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

THOMAS O'SHEA and ANNE DONAHUE)
O'SHEA, Trustees of the Thomas)
and Anne O'Shea Trust u/d/t)
DATED NOVEMBER 2, 1998;)
GRANDVIEW CREDIT, LLC, a)
California limited liability)
company; CALEB FOOT, an)
individual; KATE LARKIN)
DONAHUE, an individual; JOHN)
KEVIN DONAHUE, an individual;)
and SAN FRANCISCO RESIDENCE)
CLUB, INC., a California)
corporation,)

Plaintiffs,)

vs.)

HIGH MARK DEVELOPMENT, LLC, an)
Idaho limited liability)
company; GORDON ARAVE,)
individually and as Officer of)
High Mark Development, LLC;)
BENJAMIN D. ARAVE,)
individually and as Officer of)
High Mark Development,)

Defendants.)

MINUTE ENTRY

Case No. CV-08-4025

On the 25th day of September, 2008, Defendants' motion for partial dismissal came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Greg Crockett and Mr. Sean Coletti appeared on behalf of the Plaintiffs.

Mr. Rick Armstrong appeared on behalf of the Defendants.

The motion to quash has been resolved.

Mr. Armstrong presented Defendants' motion for partial dismissal. Mr. Crockett presented argument in opposition to the motion. Mr. Armstrong presented rebuttal argument.

The Court will take the matter under advisement and issue an opinion as soon as possible.

Court was thus adjourned.



JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of September, 2008, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE


Deputy Court Clerk

Gregory L. Crockett
Sean J. Coletti
PO Box 51219
Idaho Falls, ID 83405-1219

Richard J. Armstrong
500 Eagle Gate Tower
60 E. South Temple, Ste 500
Salt Lake City, UT 84111

BONNEVILLE COUNTY

8 SEP 26 AM 11:32

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

THOMAS O'SHEA and ANNE DONAHUE
O'SHEA, Trustees of the Thomas and Anne
O'SHEA Trust u/d/t DATED NOVEMBER 2,
1998; GRANDVIEW CREDIT, LLC, a
California limited liability company; CALEB
FOOTE, an individual, KATE LARKIN
DONAHUE, an individual, JOHN KEVIN
DONAHUE, an individual, and SAN
FRANCISCO RESIDENCE CLUB, INC., a
California corporation,

Plaintiffs,

v.

HIGH MARK DEVELOPMENT, LLC, an Idaho
limited liability company; GORDAN ARAVE,
individually and as Officer of High Mark
Development, LLC; BENJAMIN D. ARAVE,
individually and as Officer of High Mark
Development, and JOHN DOES I-X,

Defendants.

Case No. CV-08-4025

**MEMORANDUM DECISION
AND ORDER**

This matter comes before the Court on Defendants' Motion to Dismiss
Plaintiffs' Complaint pursuant to Rule 12(b)(6), I.R.C.P.

I. CLAIMS ASSERTED

Plaintiffs have brought this action against Defendants seeking relief based
upon a real estate transaction. The Complaint alleges that the Parties entered into

negotiations for the purchase of an office building in Ammon, Idaho, wherein it was represented and/or understood that the property came with a tenant and a ten year triple net lease. Again, according to the Complaint, Plaintiffs sought and obtained a certificate verifying the terms and conditions of the tenancy including a statement that the tenant was not in default on any lease payments.

Plaintiffs assert that they purchased the property believing that the tenant had been making regular payments, and would continue to make regular lease payments. Plaintiffs allege that subsequent to the purchase of the property in December 2007, they became aware that the tenant was in default on lease payments at the time of the tenancy certification and purchase. Plaintiffs allege that the tenant furthermore made no lease payments to Plaintiffs up through the time the tenant vacated the property in March 2008.

Plaintiffs' Complaint identifies five claims or theories of recovery. Each claim is asserted against the "Defendants" generally. Those claims are as follows: Count 1 alleges a breach of contract; Count 2 alleges a breach of the covenant of good faith and fair dealing; Count 3 alleges negligent and/or fraudulent misrepresentation; Count 4 alleges negligent and/or fraudulent concealment of fact material to transaction; and Count 5 alleges a right to an abatement of the purchase price.

II. STANDARD

Rule 12(b)(6), I.R.C.P., provides that a defendant can bring a motion to dismiss when the pleadings fail to "state a claim upon which relief can be granted". In considering such a motion, the court is limited to the allegations

of the complaint and facts upon which the court may take judicial notice.

Helickson v. Jenkins, 118 Idaho 273, 796 P.2d 150 (App. 1990). The nonmoving party is entitled to have all inferences from the pleadings viewed in its favor and motion to dismiss for failure to state a claim should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Gardner v. Hollifield*, 96 Idaho 609, 611, 533 P.2d 730, 732 (1975); *Taylor v. Maile*, 142 Idaho 253, 127 P.3d 156 (2005). The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims. *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995); *Gibson v. Bennett*, 141 Idaho 270, 108 P.3d 417 (App. 2005).

III. ANALYSIS

A. **Alleged liability of Gordon Arave and Benjamin D. Arave.**

Defendants assert that the individual defendants can not be subjected to liability based upon their interest in High Mark Development, LLC. As set out in the complaint, each Arave was sued "individually and as officer of High Mark Development". Defendants correctly argue that Idaho law does not permit liability of an individual solely be reason of being a member of a limited liability company. Idaho Code § 53-619 and § 53-620.

Counts 1 and 2 of Plaintiffs' Complaint allege a breach of the "Commercial Purchase and Sale Agreement" and a breach of the covenant of good faith and fair dealing respectively. These two Counts can be considered together since the implied covenant of good faith and fair dealing is a covenant

implied by law in the subject contract, and essentially derivative of the contract.

Steiner v. Ziegler-Tamura Ltd., Co., 138 Idaho 238, 242, 61 P.3d 595, 599 (2002).

The Court's reading of Plaintiffs Complaint establishes that the "seller" of the subject property was High Mark Development, LLC.¹ As such, the party to the subject purchase contract was the LLC, not the individual members of the LLC. The Court finds that the Complaint does not state a viable claim for breach of contract or breach of the covenant of good faith and fair dealing as against the Araves.

As to allegations of fraud, an officer or principal of an otherwise legal entity may still be personally liable for fraudulent conduct. A jury instruction approved by the Idaho Supreme Court in *VFP VC v. Dakota Co.*, 141 Idaho 326, 334, 109 P.3d 714, 722 (2005) is instructive:

It is an established principle of corporations [sic] law that corporate directors are not liable merely by virtue of their office for fraud or other tortious wrongdoing committed by the corporation or its officers. Instead, to be held liable a corporate director must specifically direct, actively participate in, or knowingly acquiesce in the fraud or other wrongdoing of the corporation or its officers. For Mr. Durkin to be held personally liable for any torts committed by Dakota Co. or LJD Holdings or B & D Foods, the evidence must establish that he specifically directed, actively participated in, or knowingly acquiesced in the fraudulent activities as president of Dakota Co. or LJD Holdings Inc. or B & D Foods.

Under Idaho law, the Araves would be subject to personal liability to the extent they committed fraud.

Defendants however assert that the fraud claims should be dismissed because they are not alleged with particularity. Rule 9(b), I.R.C.P. requires that when pleading fraud, "the circumstances constituting fraud . . . shall be stated with particularity". Based on the

¹ See specifically Plaintiffs' Complaint, ¶ 16 and Exhibit F, Addendum No. 1.

Court's review of the Complaint, the Court finds that the circumstances constituting the alleged fraud are set out with sufficient particularity.

B. Plaintiffs' Claim for Abatement

Defendants also seek a dismissal of Plaintiffs' claim for Abatement (Count 5). Defendants assert that the facts as alleged in the Complaint do not give rise to a claim of abatement. The Court agrees. As alleged in the Complaint, this is not a case where the sale of property was based upon acreage, with a resulting deficiency in the amount of acreage actually purchased. The Idaho Courts' application of abatement of a purchase price has been limited to situations where the sale has been based upon a specified amount of acreage.

In *Continental Life Ins. Co. v. Murphy*, 55 Idaho 573, 44 P.2d 1112 (1935), this court held that if a sale of land is a sale in gross, and not by the acre, a purchaser is not entitled to a diminution of the purchase price for a deficiency in acreage. See also *Speedway Enterprises, Inc. v. Hartsell*, 75 Ariz. 36, 251 P.2d 641 (1952); *Meyer v. Ranson*, 80 Ill.App.2d 175, 224 N.E.2d 293 (1967). On the other hand, this court in *Lies v. Mulhall*, 31 Idaho 205, 169 P. 1165 (1918), stated:

'The rule is well settled that: 'Where a sale of land is by the acre or specific quantity, as where it is at so much an acre or foot, and it is evident that the quantity, or number of acres, specified is of the essence of the contract, the purchaser is entitled to an abatement of the purchase price for a deficiency in the quantity represented to be sold, * * *;' (citing cases.) And whether the vendor knowingly misrepresented the number of acres is immaterial.' 31 Idaho at 210, 169 P. at 1166.

Dixon v. Morse, 93 Idaho 448, 449, 463 P.2d 284, 285 (1969).

While Plaintiffs may seek damages or rescission based upon an alleged breach of the purchase agreement, an adjustment of the purchase price under the theory of abatement is not available in view of the factual allegations set out in the Complaint.

IV. CONCLUSION AND ORDER

Defendants' Motion to Dismiss is granted in part, and denied in part. Specifically, Plaintiffs' claims asserting a breach of contract and breach of the covenant of good faith and fair dealing are dismissed as against Gordon Arave and Benjamin D. Arave. Plaintiffs' claim for abatement is also dismissed. The remainder of Defendants' Motion to Dismiss is denied.

DATED this 26 day of September, 2008.


JOEL E. TINGEY
DISTRICT JUDGE

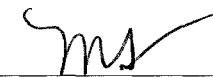
CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of September, 2008, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Gregory L. Crockett
HOPKINS RODEN CROCKETT
428 Park Avenue
P.O. Box 51218
Idaho Falls, ID 83405-1219

Richard J. Armstrong
WOOD CRAPO
500 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC
Gregory L. Crockett, ISBN 1640
Sean J. Coletti, ISBN 7199
428 Park Avenue
P. O. Box 51219
Idaho Falls, Idaho 83405-1219
Telephone: 208-523-4445
Attorneys for Plaintiff

BONNEVILLE COUNTY
IDAHO

2008 OCT -1 PM 4:38

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

THOMAS O'SHEA and ANNE
DONAHUE O'SHEA, Trustees of the
Thomas and Anne O'Shea Trust u/d/t
DATED NOVEMBER 2, 1998;
GRANDVIEW CREDIT, LLC, a
California limited liability company;
CALEB FOOTE, an individual,
KATE LARKIN DONAHUE, an
individual, JOHN KEVIN
DONAHUE, an individual, and SAN
FRANCISCO RESIDENCE CLUB,
INC., a California corporation;

Plaintiffs,

vs.

HIGH MARK DEVELOPMENT,
LLC, an Idaho limited liability
company; GORDON ARAVE,
individually and as Member of High
Mark Development, LLC; JARED
ARAVE, individually and as Member
of High Mark Development, LLC;
BENJAMIN ARAVE, individually
and as Member of High Mark
Development, LLC, and JOHN DOES
I-X,

Defendants.

Case No. CV-08-4025

FIRST AMENDED VERIFIED
COMPLAINT

COME NOW the Plaintiffs, and for cause of action against the Defendants,
complain and allege as follows:

GENERAL ALLEGATIONS

1. That Plaintiffs are collectively the owners of certain real property (hereinafter "Property") located in Bonneville County, Idaho, a professional office building, at 1675 Curlew Drive, Ammon, Idaho 83406 and particularly described as follows:

Lot 1, Block 1, Oak Ridge, Division No. 1, to the City of Ammon, Bonneville County, Idaho, according to the plat recorded thereof March 29, 2001, as Instrument No. 1044372.

2. High Mark Development, LLC ("High Mark") is an Idaho limited liability company with its principal place of business in Bingham County, Idaho.

3. The individual Defendants, Gordon Arave, Jared Arave, and Benjamin Arave, are residents of the State of Idaho and owners and/or member/managers of High Mark. Gordon Arave, individually and representing High Mark, was also the seller of the property mentioned in Paragraph 1.

4. John Does I through X are unknown and unnamed owners, shareholders, officers, directors and/or managers of High Mark, its agents or co-conspirators who are or may be liable to the Plaintiffs for damages alleged herein.

5. Sometime in 2005, Matthew F. Smith, Manager of M. Smith Enterprises, LLC, leased from Gordon Arave a professional office building at 1619 Curlew Drive, Ammon, Idaho 83406, prior to completion of the construction of a neighboring property mentioned in Paragraph 1.

6. On June 20, 2006, The Children's Center, Inc. ("The Children's Center"), Matthew F. Smith acting as President, entered into a Lease Agreement with High Mark and Gordon Arave for the lease of the property at 1675 Curlew for a ten (10) year term.

7. Some advertising and promotion of the subject property was published and disseminated by Paul Fife ("Fife"), Defendants' exclusive real estate listing and selling agent, including, but not limited to, a LoopNet® listing, a copy of which is attached hereto as Exhibit A and made a part hereof by this reference. The information and representations stated in such advertising and promotional was provided to Fife by Benjamin Arave ("Benjamin") and Scott Williams, an employee and agent of the Defendants. Plaintiffs were therefore and thereby informed that the subject property was fully leased for a ten-year term on a triple net basis; and that the tenant was paying full rent and CAM charges on a timely basis. Plaintiffs had a right to rely and did rely on the information they were provided by the Defendants and their agents. A copy of Fife's exclusive listing agreement is attached hereto as Exhibit B and is made a part hereof by this reference.

8. On August 11, 2007, Fife responded to a question by Plaintiffs' real estate agent, Jeff Needs ("Needs") by sending an email which stated that Gordon Arave was the seller of the subject property.

9. During the early fall of 2007, Plaintiffs began dealing with High Mark and its officers through Fife for the purchase of the subject Property. As part of

their negotiations, Plaintiffs asked to review financial information concerning the tenant, The Children's Center. Gordon Arave signed, both individually and as a member of High Mark, a Non-Disclosure Agreement regarding The Children's Center's financial information. The financial information provided did not disclose that The Children's Center had not been paying its rent.

10. Based on the information provided through the advertising and marketing materials and financial documents indicating that the building had a good paying tenant, on August 9, 2007 Plaintiffs entered into an RE-23 Commercial/Investment Real Estate Purchase and Sale Agreement ("Agreement"). This Agreement was signed and initialed by Defendant Gordon Arave, signing as "Gordon Arave" and also as "Gordon Arave, High Mark Dev. LLC." As a precondition of Plaintiffs' purchase of the Property, Plaintiffs requested and Defendant Gordon Arave promised that The Children's Center would complete and High Mark would deliver a Lease Estoppel Certificate ("Certificate") upon which the Plaintiffs could rely verifying the tenancy as represented in the offering information and advertising. Gordon Arave also signed, as the "Seller", both individually and on behalf of High Mark Development, LLC, several addenda to the Agreement. A true and correct copy of the Agreement and its addenda are attached hereto and incorporated herein as Exhibit C.

The October 17, 2007 Lease Estoppel Certificate.

11. At the request of Plaintiffs, Defendants' attorney, Richard Armstrong, Esq. ("Armstrong"), requested that a representative of The Children's Center

sign a Lease Estoppel Certificate. Matthew Smith signed the Certificate, dated October 17, 2007, which was addressed to “the O’Shea Family Trust and its assignees (‘Purchaser’)”. A true and correct copy of the Certificate is attached hereto and incorporated herein as Exhibit D. The Certificate states, inter alia, that “no other agreements exist between Tenant and Landlord.”

12. Paragraph 5 of the Certificate stated that “All minimum monthly rent has been paid to the end of the current calendar month, which is September 2007, and no rent under the Lease has been paid more than one month in advance as of its due date.”

13. Paragraph 7 of the Certificate stated that “The undersigned is not in default under the Lease and is current in the payment of any taxes, utilities, or other charges required to be paid by the undersigned.”

14. The Certificate ended by stating “This certification is made with the knowledge that it will be relied upon by Purchaser, Purchaser’s lender, and any successor or assignee of Purchaser’s right to purchase the Property in connection with financing and sale of the Property and the purchase of the Property by Purchaser.”

15. Defendants provided Plaintiffs with the Certificate prior to Plaintiffs’ purchase of the Property with the intent that the Plaintiffs would rely on the Certificate. Plaintiffs did rely on the facts set forth therein and had Plaintiffs known the true facts would not have purchased the property.

16. On October 24, 2007, Gordon Arave signed, as the “Seller,” both individually and as a representative of High Mark, an Addendum to the Purchase and Sale

Agreement stating that “Buyer accepts the estoppel signed by Tenant on October 17, 2007.”

17. On November 27, 2007, Gordon Arave sent to the President of The Children’s Center information showing that, through December 31, 2007, The Children’s Center then owed \$26,221.22 in CAM charges.

18. Plaintiffs completed the purchase of the subject Property from High Mark in December of 2007 and as a part of such transaction and by way of assignment and assumption, became the “Lessor” under that certain Lease Agreement dated June 20, 2006 between High Mark as “Lessor” and The Children’s Center, as “Lessee”.

19. In October, November, and December of 2007, The Children’s Center failed to make its lease and CAM charge payments to High Mark of \$28,987.50 per month.

The October 18, 2007 Agreement.

20. In October of 2007, Gordon Arave individually and as “manager/member” of High Mark, and Jared Arave, individually, signed an agreement with Matthew Smith as President of The Children’s Center, contingent upon the closing of the sale of the Property to Plaintiffs, as follows:

a. Jared Arave and Gordon Arave would release The Children’s Center from its promissory note dated April 18, 2007 in the amount of \$199,900.00;

b. The Children’s Center would sign the estoppel certificate dated October 17, 2007;

c. The Children's Center would release all interests it had to two options to purchase, one of which related to the Idaho Falls building which is the subject Property of this Complaint; and

d. Matthew F. Smith would sign a promissory note amending an October 1, 2005 promissory note between High Mark and M. Smith Enterprises, LLC, agreeing to pay Defendants the balance of the note on an amortized payment schedule.

A true and correct copy of said Agreement is attached hereto and incorporated herein as Exhibit E. Plaintiffs had no knowledge of this Agreement until June, 2008.

21. The Children's Center has never made a rent or CAM payment to Plaintiffs since Plaintiffs became owners of the Property and Lessors under the lease.

22. The Children's Center vacated the premises at 1675 Curlew Drive, Ammon, Idaho on or before March 1, 2008 without ever having paid rent or common area charges to Plaintiff.

The June 1, 2005 Promissory Note.

23. On June 1, 2005, Matthew F. Smith signed a Promissory Note for \$100,000 for rent past due and owing on the property at 1619 Curlew Drive. The Note was made payable to the order of Gordon Arave.

A true and correct copy of said Promissory Note is attached hereto and incorporated herein as Exhibit F.

The October 1, 2005 Promissory Note.

24. On October 1, 2005, Matthew F. Smith signed a Promissory Note for \$100,000 for rent past due and owing on the property at 1619 Curlew Drive. The Note was made payable the order of Gordon Arave.

A true and correct copy of said Promissory Note is attached hereto and incorporated herein as Exhibit G.

The April 18, 2007 Promissory Note.

25. On April 18, 2007, Matthew F. Smith signed a Promissory Note for \$199,900.00 on behalf of The Children's Center, for unpaid rent on the Property at 1675 Curlew Drive. The Note was made payable to the order of Jared Arave and Gordon Arave.

A true and correct copy of said Promissory Note is attached hereto and incorporated herein as Exhibit H.

The November 7, 2007 Promissory Note.

26. On November 7, 2007, Armstrong contacted legal counsel for The Children's Center by email asking when rent and CAM charges on the Property would be paid. Armstrong stated that his "client" had asked if Armstrong could contact The Children's Center about the possibility of satisfying The Children's Center's overdue rent obligations through issuance of another promissory note, stating that the note would "defer rent payments for October and November 2007." Armstrong also stated, "Mr. Smith's LLC is still required to make timely payments under the other outstanding note to

Mr. Arave.” Armstrong drafted a promissory note and sent it to The Children’s Center to satisfy the overdue rent and CAM charge obligation for October and November 2007. A true and correct copy of said e-mail message is attached hereto and incorporated herein as Exhibit I.

27. Matthew Smith then signed a Promissory Note on November 7, 2007, payable to High Mark with payments beginning December 1, 2007, for the principal sum of \$57,975.00, the equivalent of two months’ rent and CAM charges for lease of the subject Property. A true and correct copy of the Promissory Note is attached hereto and incorporated herein as Exhibit J.

Defendants’ Fraud and Nondisclosure.

28. At all pertinent times, Defendants represented that the Center was a bona fide paying tenant under a long-term lease and that the lease payments were current and that the lease was not in default.

29. High Mark and its officers at no time informed Plaintiffs of the financial problems of The Children’s Center, its failure to make rent payments, the existence of the June 1, 2005, October 1, 2005, April 18, 2007, or November 7, 2007 promissory notes, or the October 18, 2007 agreement pertaining to the execution of the Certificate and the cancellation of indebtedness of The Children’s Center if they signed the agreed Certificate or the fact that The Children’s Center was in default under the Lease.

30. The Plaintiffs only discovered the existence of the October 2007 Agreement and the subject Promissory Notes following their purchase and the tenant's abandonment of the Property.

COUNT I

BREACH OF CONTRACT

31. The Plaintiffs incorporate paragraphs 1 through 30 of this Complaint as though the same were here set forth in full verbatim.

32. On Addendum 1 of the Commercial Purchase and Sale Agreement, Defendants promised that "Seller shall deliver to Buyer and [sic] estoppels for the Tenant 10 days prior to Closing. Should the information provided on the estoppels differ from the information provided by Seller, Buyer shall have the option to terminate the Agreement and receive full refund of Earnest Money." (See Exhibit C). The Agreement is signed by Gordon Arave both individually and on behalf of High Mark as the "Seller."

33. Defendants, either individually or through their agents, materially breached the Commercial Purchase and Sale Agreement by negligently and/or fraudulently misrepresenting in the Lease Estoppel Certificate that all minimum monthly rent had been paid to the end of September 2007, and that The Children's Center was current in the payment of taxes, utilities, or other charges required to be paid.

34. Plaintiffs have been substantially injured and damaged on account of Defendants' breach as, were it not for their misrepresentations, Plaintiffs would not have

purchased the Property for which The Children's Center has failed to pay rent for each and every month following Plaintiffs' purchase of the property.

35. Plaintiffs' damages are not less than the sum of \$28,987.50 per calendar month from January 2008 through the expiration of the lease term on June 19, 2016.

COUNT II

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

36. The Plaintiffs incorporate paragraphs 1 through 35 of this Complaint as though the same were here set forth in full verbatim.

37. Defendants owed Plaintiffs a duty of good faith and fair dealing in the Commercial Purchase and Sale Agreement and with regard to the information contained in the Lease Estoppel Certificate.

38. Defendants, either individually or through their agents, breached this implied covenant of good faith and fair dealing by negligently and/or fraudulently misrepresenting in the Lease Estoppel Certificate that all minimum monthly rent had been paid for the period at least to the end of September 2007, and that The Children's Center was current in the payment of taxes, utilities, or other charges required to be paid.

39. Plaintiffs have been substantially injured and damaged on account of Defendants' breach as, were it not for their misrepresentations, Plaintiffs would not have purchased the said property.

40. Plaintiffs' damages are not less than the sum of \$28,987.50 per calendar month from January 2008 through the expiration of the lease term on June 19, 2016.

COUNT III

NEGLIGENT AND/OR FRAUDULENT MISREPRESENTATION

41. The Plaintiffs incorporate paragraphs 1 through 40 of this Complaint as though the same were here set forth in full verbatim.

42. Defendants, either individually or through their agents, at all times represented to Plaintiffs that The Children's Center was in good standing in its lease payments to High Mark, and did not at any time inform Plaintiffs that The Children's Center was not making its lease payments.

43. Defendants failed to inform Plaintiffs that The Children's Center and/or its President had signed promissory notes on June 1, 2005, October 1, 2005 and April 18, 2007 for unpaid rent.

44. Defendants failed to inform Plaintiffs that The Children's Center failed to pay rent for October, November, or December 2007, or that The Children's Center had signed a promissory note for the rent for October and November.

45. Defendants' statements, either individually or through their agents, to Plaintiffs regarding The Children's Center's payment of rent were material in that Plaintiffs would not have purchased the Property but for their understanding that there

was a bona fide tenant in good standing under a long-term lease; and that the lease was not in default.

46. Defendants knew, at the time of closing on the Property, that their statements, either individually or through their agents, to Plaintiffs regarding The Children's Center's payment of rent on the Property were false, or that the Plaintiffs relied on the existence of a bona fide lease and failure to inform the Plaintiffs of the true facts constitutes a fraudulent misrepresentation by omission and silence.

47. Defendants intended that the falsity of their statements and/or silence would be relied upon by Plaintiffs in purchasing the Property.

48. Plaintiffs were unaware at any time prior to or at closing on the Property of the existence of the June 1, 2005, October 1, 2005, April 18, 2007, and November 7, 2007 promissory notes, the October 18, 2007 agreement or that The Children's Center had not made its rent payments for October or November, or December of 2007.

49. Plaintiffs relied upon Defendants' false statements, made either individually or through their agents, in purchasing the Property.

50. Plaintiffs' reliance was justifiable, in that there was no way for Plaintiffs to know that The Children's Center had not made its rent payments for October, November or December of 2007; and the Plaintiffs were entitled to rely on the representations set forth in the Estoppel Certificate dated October 17, 2007.

51. Plaintiffs have been substantially injured and damaged because of the Defendants' actions and the fact that The Children's Center has failed to pay rent under its Lease Agreement for each and every month following Plaintiff's purchase of the Property. Plaintiff's damages are not less than \$28,987.50 per month from January 2008 through June 19, 2016.

52. The Plaintiffs have satisfied all conditions precedent to this cause of action including all notice requirements required under the subject Lease Agreement including, but not limited to, all duties of performance required by the Lessor under the subject Lease Agreement.

53. The Defendants were negligent in their representations to the Plaintiffs, whether individually or through their agents; which negligence has caused the Plaintiffs' substantial damages in an amount to be proven at trial.

COUNT IV

NEGLIGENT AND/OR FRAUDULENT CONCEALMENT OF FACT MATERIAL TO TRANSACTION

54. Plaintiffs reallege paragraphs 1 through 53 of this Complaint as though the same were here set forth in full verbatim.

55. Defendants concealed or failed to disclose the fact that The Children's Center failed to pay its lease and CAM payments for October, November, and December of 2007.

56. Defendants concealed or failed to disclose the fact that The Children's Center and/or its President had signed promissory notes on June 1, 2005, October 1, 2005, April 18, 2007, and November 7, 2007, for unpaid rent.

57. Defendants' concealment of The Children's Center's nonpayment of rent was material in that Plaintiffs would not have purchased the Property but for its understanding that there was a tenant in good standing; and that lease payments would produce substantial cash flow.

58. Defendants failed to disclose material facts to Plaintiffs in an effort to deceive Plaintiffs into believing that a good paying tenant existed and therefore inducing Plaintiffs' purchase of the Property.

59. Plaintiffs at no time prior to or at the time of closing knew of the facts concealed by Defendants.

60. Plaintiffs would not have proceeded with the transaction if they had known that The Children's Center was not making its rent payments.

61. Plaintiffs have sustained damages due to Defendants' concealment or non-disclosure of The Children's Center's nonpayment of rent.

62. The Plaintiffs are entitled to a rescission of the purchase and sale and to be entirely restored to their pre-contract status and position.

COUNT V

ATTORNEY'S FEES

63. Plaintiffs reallege paragraphs 1 through 62 of this Complaint as if the same were here set forth in full verbatim.

64. The Plaintiffs have and will continue to incur substantial attorney's fees and costs in prosecuting and bringing this action and the Plaintiffs have a right to recover their attorney's fees and costs incurred and to be incurred herein in accordance with Paragraph 25 of the Commercial Purchase and Sale Agreement and Idaho Code §§12-120 and 12-121.

65. The sum of \$15,000.00 is a reasonable attorney fee should this matter be uncontested by the Defendants herein; but the Court should award such additional and further fees and costs should this matter be contested by the Defendants or any of them.

WHEREFORE, the Plaintiffs pray the judgment, order and decree of this Court, as follows:

1. That Judgment be entered for the Plaintiffs and against each of the Defendants, jointly and severally;
2. That the Plaintiffs be awarded rescission of the purchase;
3. That the Plaintiffs be awarded their damages in an amount to be proven at trial but not less than the sum of \$28,987.50 per calendar month from January 2008 through the expiration of the lease term on June 19, 2016;

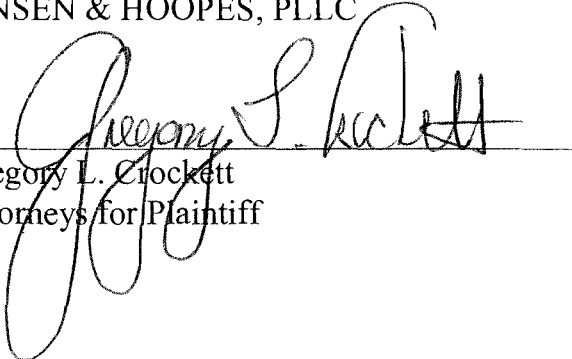
4. That the Plaintiffs be awarded their costs and reasonable attorney's fees incurred and to be incurred herein; and

5. That the Plaintiffs be awarded such other and further relief as may be just and equitable in the premises.

DATED this 12th day of October, 2008.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By



Gregory L. Crockett
Attorneys for Plaintiff

STATE OF CALIFORNIA)

County of Alameda) ss.

THOMAS O'SHEA, being first duly sworn, deposes and says:

That I am the one of the Plaintiffs in the above-entitled action, that I have read the above and foregoing First Amended Verified Complaint, know the contents thereof, and that I believe the facts therein stated to be true.

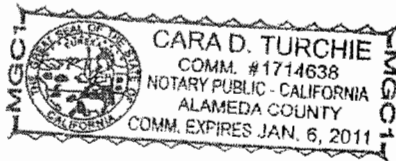
Thomas O'Shea
THOMAS O'SHEA

SUBSCRIBED AND SWORN to before me this 30th day of

September, 2008.

S
E
A
L

Cara D. Turchie
Notary Public for California
Residing at: 5111 Telegraph Oakland, CA
My Commission Expires: 1-6-2011



The Children's Center Inc

Jeff Needs - (208) 468-7730 - jeff@needsrealestate.com

Needs Real Estate Services

Prepared For: O'Shea Family Trust



1675 Curlew Idaho Falls, ID

County:	Bonneville
Property Type:	Office Medical Office
Building Size:	20,000 SF
Building Class:	A
Lot Size:	50,403 SF
Occupancy:	100%
Price:	\$3,800,000
Price/SF:	\$190.00
Cap Rate:	8.00%
Status:	Active
LoopNet ID:	15166694

<http://listing.loopnet.com/15166694>

- New Buiding
- Single Tenant
- 10 year lease with option to renew
- Triple Net Lease

Property Description

Here is a great investment property with that hard to find 10 year, Triple Net Lease. New building, lease matures in 2016, option to renew with CPI increases.

Tenant is The Children's Center Inc. who specializes in complete children care.

Location Description

East on 17 Street to Curlew, on the corner of East 17th and Curlew

EXHIBIT

A

Created: 8/7/2007

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The Children's Center Inc

Jeff Needs · (208) 468-7730 · jeff@needsrealestate.com

Needs Real Estate Services

Prepared For: O'Shea Family Trust

Financial Summary		Debt & Equity Information	
Type:	Actual 2007	Type:	Existing
Schedule Gross Income:	\$299,850	Amount:	\$2,400,000
Net Operating Income:	\$299,850	Interest Rate:	6.00%
		Term:	25
		Debt Service:	\$185,000

Major Tenant Information		
Tenant Name	Lease End Date	SF Occupied
The Children's Center Inc.	6/19/2016	20,000


No. Stories: 1 Parking Ratio: 3/1,000 SF

Contact
Paul Fife High Desert Realtors (208) 317-6111

Created: 8/7/2007

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RE- 16 EXCLUSIVE SELLER REPRESENTATION AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



DATE June 4, 2007

AGENT: Paul Fife

Acting as Agent for the Broker

1. SELLER High Mark Development LLC

retains Paul Fife **Broker of** High Desert Realtors **a:**

Exclusive SELLER'S Broker to sell, lease, or exchange the property described in Item #2 below, during the term of this agreement and on any additional terms hereafter set forth.

2. PROPERTY ADDRESS AND LEGAL DESCRIPTION. The property address and the complete legal description of the property are as set forth below.

Address 1675 Curlew Drive

County Bonneville

City Ammon

Zip 83221

Legal Description No. 50,403.98 Sq. Ft. Lot 1, Block 1, Oak Ridge Division

or ☐ Legal Description Attached as addendum # _____ . (Addendum must accompany original listing)

3. TERM OF AGREEMENT. The term of this Agreement shall commence on June 4, 2007 and shall expire at 11:59 p.m. on June 1, 2008 unless renewed or extended. If the SELLER accepts an offer to purchase or exchange the terms of this Agreement shall be extended through the closing of the transaction.

4. PRICE. SELLER agrees to sell the property for a total price of \$ 3,800,000

5. FINANCING. SELLER agrees to consider the following types of financing: (Complete all applicable provisions).

☐ FHA ☐ VA ☐ CONVENTIONAL ☐ IHFA ☐ RURAL DEVELOPMENT ☐ Exchange
☐ Cash ☐ Cash to existing loan(s) ☐ Assumption of existing loan(s)

☐ SELLER will carry contract and accept a minimum down payment of \$ _____ and an acceptable secured note for the balance to be paid as follows: _____

Other acceptable terms Cash/New Loan/assumption of existing loan

Brokers are required by Idaho Real Estate Law to present all written offers.

6. BROKERAGE FEE.

(A) If Broker or any person, including SELLER, procures a purchaser ready, willing and able to purchase, transfer or exchange the property on the terms stated herein or on any other price and terms agreed to in writing, the SELLER agrees to pay a total brokerage fee of 5 % of the contract or purchase price OR \$ _____ of which _____ % of the contract or purchase price OR \$ _____ will be shared with the cooperating brokerage unless otherwise agreed to in writing. The fee shall be paid in cash at closing unless otherwise designated by the Broker in writing.

(B) Further, the brokerage fee is payable if the property or any portion thereof or any interest therein is, directly or indirectly, sold, exchanged or optioned or agreed to be sold, exchanged or optioned within 30 days following expiration of the term hereof to any person who has examined, been introduced to or been shown the property during the term hereof.

(C) If SELLER, upon termination of this Agreement, enters into an Exclusive Right to Sell Agreement to market said property with another Broker, then the time period specified above in Section 6B, shall not apply and will be of no further force or effect.

7. ADDITIONAL FEES: none

EXHIBIT

B

SELLER'S Initials ([Signature]) 112 6/4/07 Date

FIFE027

PROPERTY ADDRESS: 1675 Curlew Drive

Ammon

8. INCLUDED ITEMS. SELLER agrees to leave with the premises all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, built in and "drop in" ranges (but excluding all other ranges), fuel tanks and irrigation fixtures and equipment, and any and all, if any, water and water rights, and any and all, if any, ditches and ditch rights appurtenant thereto that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein. Also included none

9. EXCLUDED ITEMS. Tenants personal property

10. TITLE AND EXISTING ENCUMBRANCES. Title to the property is to be conveyed by Warranty Deed unless otherwise provided herein, and is to be marketable and insurable except for rights reserved in federal patents, federal, state or railroad deeds, building or use restrictions, building and/or zoning regulations and ordinances of any governmental entity, and rights of way and easements established or of record. The individual executing this Agreement warrants and represents that said individual either owns the property or has full power and right to enter into this Agreement and to sell and convey the property on behalf of the SELLER and that to the best of said individual's knowledge the property is in compliance with all applicable building and zoning regulations and with any applicable covenants and restrictions affecting the property except none

The SELLER agrees to provide good and marketable title to the property at the time of closing. The property is currently encumbered by the following liens:

☒ 1st Mortgage ☐ 2nd Mortgage ☐ Home Equity Loan ☐ Other _____

☐ The property is not encumbered by any mortgage, lien, or other security instrument.

Loan payments ☒ are ☐ are not current; loan ☒ is ☐ is not assumable. If loan is assumable, Buyer ☒ will ☐ will not be required to qualify and ☒ will ☐ will not release SELLER'S liability.

SELLER is aware that some loans have a recapture provision or prepayment penalty and SELLER may be required to pay additional funds to satisfy such recapture or penalty.

11. MULTIPLE LISTING SERVICE AUTHORIZATION. (Name of MLS) Idaho Falls Board of Realtors

JL By initialing this line, it is understood that Broker is a member of the above MLS. SELLER authorizes and directs (Initial) Broker to offer to cooperate with and compensate other Brokers, and to submit a Property Data Sheet and any authorized changes to MLS as required in the Rules and Regulations of the above MLS. SELLER understands and agrees that any MLS information regarding the above property will be made available to Buyer's Agents and/or Dual Agents. SELLER acknowledges that it has been explained that any sales price information compiled as a result of this Agreement may be provided to the County Assessor's office. SELLER agrees that any such disclosure is permissible.

12. LOCKBOX AUTHORIZATION.

/ By initialing this line, SELLER directs that a lockbox containing a key which gives MLS Keyholders access to the (Initial) property shall be placed on any building located on the property. SELLER authorizes MLS Keyholders to enter said property to inspect or show the same. SELLER agrees to hold Broker harmless from any liability or loss.

13. ADVERTISING AUTHORIZATION.

SELLER ☒ does ☐ does not agree to allow Broker to advertise said property in print media.

SELLER ☒ does ☐ does not agree to allow Broker to advertise said property in internet advertising media.

SELLER ☒ does ☐ does not agree to allow Broker to advertise said property in other advertising media.

SELLER ☐ does ☒ does not agree to allow Broker to place the Broker's sign on above property.

14. SELLER'S PROPERTY DISCLOSURE FORM. If required by Title 55, Chapter 25 Idaho Code, SELLER shall within ten (10) days after execution of a Purchase and Sale Agreement provide to Buyer "SELLER'S Property Disclosure Form" and Buyer shall have three (3) business days from receipt of the disclosure report to rescind the offer in a written signed and dated document delivered to the SELLER or the SELLER'S Agents. Buyer rescission must be based on a specific written objection to a disclosure made in the SELLER'S Property Disclosure Form.

SELLER'S Initials (JL) 6/4/07 Date

PROPERTY ADDRESS: 1675 Curlew Drive

Ammon

15. LEAD BASED PAINT DISCLOSURE. SELLER has been advised of disclosure obligations regarding lead-based paint and lead-based paint hazards in the event property is a defined "Target Housing" under Federal Regulations. Said property ☐ is ☒ is not "Target Housing". If yes SELLER agrees to sign and complete the Information Disclosure and Acknowledgment Form provided to me and deliver to my agent all records, test reports or other information related to the presence of lead-based paint or lead-based paint hazards, if any.

16. TRANSACTION RELATED SERVICES DISCLAIMER: SELLER understands that Broker is qualified to advise SELLER on general matters concerning real estate, but is not an expert in matters of law, tax, financing, surveying, structural conditions, property inspections, hazardous materials, or engineering. SELLER acknowledges that Broker advises SELLER to seek expert assistance for advice on such matters. The Broker or Broker's agents may, during the course of the transaction, identify individuals or entities who perform services including **BUT NOT LIMITED TO** the following; home inspections, service contracts, appraisals, environmental assessment inspection, code compliance inspection, title insurance, closing and escrow services, loans and refinancing services, construction and repair, legal and accounting services, and/or surveys. The SELLER understands that the identification of service providers is solely for SELLER'S convenience and that the Broker or their agents is not guaranteeing or assuring that the service provider will perform its duties in accordance with the SELLER'S expectations. SELLER has the right to make arrangements with any entity SELLER chooses to provide these services. SELLER hereby releases and holds harmless the Broker and Broker's agents from any claims by the SELLER that service providers breached their agreement, were negligent, misrepresented information, or otherwise failed to perform in accordance with the SELLER'S expectations. In the event the SELLER requests Broker to obtain any products or services from outside sources, **SELLER agrees to pay for them immediately when payment is due.** For example: surveys or engineering, environmental and/or soil tests, title reports, home or property inspections, appraisals, etc.

17. CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY: The undersigned SELLER(S) have received, read and understand the Agency Disclosure Brochure (prepared by the Idaho Real Estate Commission). The undersigned SELLER(S) understand that the brokerage involved in this transaction may be providing agency representation to both the SELLER(S) and the Buyer. The undersigned SELLER(S) each understands that, as an agent for both SELLER/client and Buyer/client, a brokerage will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the Buyer/client to buy or the SELLER/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2085, Idaho Code. The undersigned SELLER(S) each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned SELLER(S) further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship. SELLER ☐ does ☐ does not consent to allow Buyer's Agents and/or Limited Dual Agents to show property and to allow the Broker to share brokerage fees as determined by the Broker with Buyer's Agents and/or Limited Dual Agents.

18. SELLER NOTIFICATION AND CONSENT TO RELEASE FROM CONFLICTING AGENCY DUTIES: SELLER acknowledges that Broker as named above has disclosed the fact that at times Broker acts as agent(s) for other Buyers and for SELLERS in the sale of the property. SELLER has been advised and understands that it may create a conflict of interest for Broker to introduce Buyers to SELLER Client's property because Broker could not satisfy all of its Client duties to both Buyer Client and SELLER Client in connection with such a showing or any transaction which resulted.

Based on the understandings acknowledged, SELLER makes the following election: (Make one selection only)

Initials
**Limited Dual
 Agency and/or
 Assigned Agency**

OR

Initials
Single Agency

SELLER **does want** Broker to introduce any interested Client of Broker to Client SELLER'S property and hereby agrees to relieve Broker of conflicting agency duties, including the duty to disclose confidential information known to the Broker at that time and the duty of loyalty to either party. Relieved of all conflicting agency duties, Broker will act in an unbiased manner to assist the SELLER and Buyer in the introduction of Buyers to such SELLER Client's property and in the preparation of any contract of sale which may result. SELLER authorizes Broker to act in a **limited dual agency** capacity. Further, SELLER agrees that Broker may offer, but is not obligated to offer, **assigned agency** representation, and if offered by the Broker, SELLER authorizes Broker to act in such capacity.

SELLER **does not want** Broker to introduce interested Buyer Clients to Client SELLER'S property and hereby releases Broker from any responsibility or duty under the agency agreement to do so. Broker shall be under no obligation or duty to introduce the Buyer to any Client SELLER'S property.

SELLER'S Initials (JG) 6/4/07 Date

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PROPERTY ADDRESS: 1675 Curlew Drive

Ammon

19. INFORMATION WARRANTY. SELLER warrants that all information provided by the SELLER herein and hereafter will be true and correct.

20. DEPOSIT. Brokers are authorized to receive a deposit from any prospective purchaser who offers to purchase or exchange the property and shall notify SELLER of the receipt of any such deposit. Acceptance of such deposit by a Broker shall not constitute SELLER'S acceptance of any such offer.

21. GENERAL PROVISIONS. In the event either party shall initiate any suit or action or appeal on any matter relating to this Agreement the defaulting party shall pay the prevailing party all damages and expenses resulting from the default, including all reasonable attorneys' fees and all court costs and other expenses incurred by the prevailing party. This Agreement is made in accordance with and shall be interpreted and governed by the laws of the State of Idaho. All rights and obligations of the parties hereunder shall be binding upon and inure to the benefit of their heirs, personal representatives, successors and assigns.

22. NON-DISCRIMINATION. SELLER and Broker acknowledge that it is illegal to discriminate in the showing, sale or leasing of the property or the basis of race, religion, creed, color, sex, marital status, national origin, familial, or handicapped status of such person.

23. SINGULAR AND PLURAL terms each include the other, when appropriate.

24. FACSIMILE TRANSMISSION. Facsimile or electronic transmission of any signed original document and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

25. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

26. OTHER TERMS AND CONDITIONS: Exclusions: Matt Smith and Associates

CONTRACTOR REGISTRATION # (if applicable)

Seller Signature: High Desert Real, LLC

Accepted: _____
(Broker)

Seller Signature: Gordon Brown

By: _____
(Agent)

Date: _____

Date: _____

Address: _____

Address: 700 So. Woodruff

City: _____ **State:** _____ **Zip:** _____

City: Idaho Falls **State:** ID **Zip:** 83401

E-Mail: _____

E-Mail: pfife@highdesertrealtors.com

Phone(s): _____

Phone(s): _____

Fax: _____

Fax: _____

THE PROVISIONS CONTAINED ON PAGES ONE, TWO AND THREE SHALL ALSO CONSTITUTE PART OF THE AGREEMENT OF THE PARTIES. EACH OF THE PARTIES ACKNOWLEDGES READING THIS AGREEMENT IN FULL.

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RE-23 COMMERCIAL PURCHASE AND SALE AGREEMENT JULY, 2007 EDITION PAGE 1 OF 7



RE-23 COMMERCIAL/INVESTMENT REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.



ID# 1992

DATE August 9, 2007

LISTING AGENCY High Desert Realtors Office Phone #208-525-0350 Fax #
Listing Agent Paul Fife E-Mail pfife@highdesertrealtors.com Phone #
SELLING AGENCY Needs Real Estate Office Phone #208-409-9565 Fax #
Selling Agent Jeff Needs E-Mail needs@realestate.com Phone #

1. BUYER: O'Shea Family Trust and or Assigns (Hereinafter called "BUYER")
agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"
COMMONLY KNOWN AS 1675 Curlew City Ammon
County, Bonneville ID, Zip 83404 and legally described as: West, 50,403.89 sq. ft. Lot 1, Block 1, Oak
Ridge Division, City of Ammon
OR Legal Description Attached as addendum # (Addendum must accompany original offer.)

2. \$ 3,700,000.00 PURCHASE PRICE: Three million seven hundred thousand DOLLARS,
payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D must equal the total purchase price.

\$ 50,000.00 (A). EARNEST MONEY: BUYER hereby deposits Fifty thousand DOLLARS as Earnest
Money evidenced by: ☐ cash ☐ personal check ☐ cashier's check ☐ note (due date)
☒ otherwise transfer Earnest Money to be deposited in trust account ☐ upon receipt, or ☒ upon acceptance by all parties
and shall be held by: ☐ Listing Broker ☐ Selling Broker ☒ Other Pioneer Title, Boise for the benefit of the parties hereto. The
responsible Broker shall be Doug Page

(B). ALL CASH OFFER ☐ NO ☒ YES IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE
SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within business days from the date of acceptance of
this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes,
but is not limited to a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be
sold.

4. (C). FINANCING:

- ☐ Additional financial terms are specified under the heading "OTHER TERMS AND CONDITIONS" (Section 5 below)
☐ Additional financing terms are contained in a financing addendum of same date, and attached hereto, and signed by both parties.

5. \$ 3,650,000.00 (D). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING: (Not including closing costs) Cash at closing to
be paid by BUYER at closing in GOOD FUNDS, includes cash, electronic transfer funds, certified check, or cashier's check.

4. SECTION 1031 TAX DEFERRED EXCHANGE: By checking either or both of the boxes that follow, it is hereby acknowledged by the parties
that the ☒ Buyer, ☐ Seller intends to use the purchase and sale of the Premises as an integral part of a tax deferred like-kind exchange as
allowed under Section 1031 of the Internal Revenue Code (the "Exchange"). For purposes of this paragraph, the party participating in the
Exchange shall be identified as the "Exchanger." If either box above is checked, then the parties recognize that a material part of the
Exchanger's consideration for entering into the agreement for the purchase and sale of the Premises is the successful completion of the
exchange. The parties agree to assist each other in the completion of such exchange by cooperating with each other by signing any and all
relevant documents provided that the party not doing the Exchange shall not incur any liabilities, costs, fees, or taxes in excess of those which
that party would have incurred had this transaction not been an Exchange.

BUYER'S Initials JS X Date Aug 14, 2007SELLER'S Initials JGC Date 8/14/07

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EXHIBIT

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PROPERTY ADDRESS: 1675 Curlew

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ID# 1992

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing See Addendum (1)

6. INCLUDED ITEMS:

(a) All existing fixtures and fittings that are attached to the premises are included in the purchase price (unless excluded below) and shall be transferred free of liens. These include but are not limited to, all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks, all water systems, wells, spring water that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein.

(b) Irrigation fixtures and equipment, and any and all, if any, water and water rights, and any and all, if any, ditches and ditch rights that are appurtenant thereto that are now on or used in connection with the premises shall be included in the sale unless otherwise provided herein.

(c) Other items specifically included in this sale: none

(d) Items specifically excluded in this sale: Tenant's personal property

7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by ☒ warranty deed ☐ special warranty deed or ☐ deed, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.

(A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction ☒ SELLER or ☐ BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have 5 business day(s) from receipt of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within 5 business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). TITLE COMPANY: The parties agree that Pioneer Title Company located at Boise shall provide the title policy and preliminary report of commitment.

BUYER'S Initials *JS* X Date *Aug 14, 2007*

SELLER'S Initials *JS* X Date *8/14/07*

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PROPERTY ADDRESS: 1675 Curlew

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JULY 1992

3). If SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within _____ business days that they will not continue with the transaction and demand the return of their Earnest Money.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items with SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the premises available for all inspections. BUYER shall keep the premises free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. ADDITIONAL COSTS: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

COSTS	BUYER	SELLER	SHARED EQUALLY	NA	COSTS	BUYER	SELLER	SHARED EQUALLY	NA
Appraisal fee				<input checked="" type="checkbox"/>	Flood certification fee				<input checked="" type="checkbox"/>
Long term Escrow fees				<input checked="" type="checkbox"/>	Title Ins. Standard Coverage owner's policy		<input checked="" type="checkbox"/>		
Closing fee			<input checked="" type="checkbox"/>		Lenders Extended Policy				<input checked="" type="checkbox"/>
Additional Title Ins.				<input checked="" type="checkbox"/>	Attorney contact preparation and/or review fee				<input checked="" type="checkbox"/>
Water Rights				<input checked="" type="checkbox"/>					

11. ESCROW/COLLECTION: If a long-term escrow/collection is involved, then the escrow/collection holder shall be _____. Each party agrees to pay one-half of escrow/collection fees and escrow setup fees.

12. RESIDENTIAL PROPERTY CONDITION DISCLOSURE: Idaho Code §55-2501 et seq. requires that any person intending to transfer "residential real property" deliver to the transferee or his agent, within ten (10) days of the acceptance of an offer to purchase, a SELLER PROPERTY DISCLOSURE FORM. "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use. The property ☐ is ☒ is not subject to the Property Condition Disclosure Act.

13. LEAD-BASED PAINT DISCLOSURE: Properties that meet the criteria of "target housing" require certain disclosures regarding lead-based paint hazards. The term lead-based paint hazard is intended to identify lead-based paint and all residential lead-containing dusts and soils regardless of the source of the lead. Pursuant to 42 USCA §4851 et seq., "target housing" means any housing constructed prior to 1979, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. A "residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons. "Residential real property" means real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons.

The subject property ☐ is ☒ is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home," (b) receipt of the Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER's right to have the property tested for lead-based paint hazards to be completed no later than _____ or the contingency will terminate, (d) that BUYER hereby ☐ waives ☐ does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the property, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is cancelled under this clause, BUYER's earnest money deposit will be returned to BUYER.

BUYER'S Initials JS Date 8/14/07SELLER'S Initials JS Date 8/14/07

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PROPERTY ADDRESS: 1675 Curlew

Ammon

ID 1992

14. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

16. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs): BUYER is responsible to obtain and review a copy of the CC&Rs (if applicable). BUYER has reviewed CC&Rs ☐ Yes ☒ No.

18. RISK OF LOSS: Prior to the closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.

17. CONDITION OF PREMISES AT CLOSING: Upon expiration of the Inspection/Due Diligence period and thereafter, BUYER agrees to purchase the Premises in as-is condition, where is, with all faults and with no further repairs required unless otherwise agreed upon by the parties in writing. BUYER will assume all obligations with respect to the Premises. SELLER shall maintain the Premises until the closing in its present condition, ordinary wear and tear excepted.

19. CLOSING AGENCY: The Closing Agency for this transaction shall be Pioneer Title located at Boise, ID

19. CLOSING DATE: On or before the closing date, BUYER and SELLER shall deposit with the Closing Agency all funds and instruments necessary to complete the sale. The closing date shall be no later than September 15, 2007. "Closing Date" means the date on which all documents are either recorded or accepted by an escrow/collection agency and the sale proceeds are available to SELLER.

20. POSSESSION/PRORATION: BUYER shall be entitled to possession ☒ UPON CLOSING or ☐ DATE TIME ☐ AM ☐ PM. Taxes and water assessments (using the last available assessment as a basis), rent, insurance premiums, interest and reserve on liens, encumbrances or obligations assumed and utilities shall be prorated as of the day of closing or date of closing. Any tenant deposits held by SELLER shall be credited to BUYER at closing.

21. "NOT APPLICABLE DEFINED:" The letters "N/A," "N/A," "N/A," and "N/A" as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

22. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

23. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code 573-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

24. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker, provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of Brokerage fee, title insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, Brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

BUYER'S Initials *JS* XDate *Aug 14, 2007*SELLER'S Initials *JS*Date *8/14/07*

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PROPERTY ADDRESS: 1675 Curlew

Nelson

ID# 1992

25. **ATTORNEY'S FEES:** If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

26. **EARNEST MONEY DISPUTE / INTERPLEADER:** Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

27. **SEVERABILITY:** In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

28. **COUNTERPARTS:** This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

29. **SALES PRICE INFORMATION:** SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sales data from this transaction, including selling price and property address to the local Association/Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's broker.

30. **REPRESENTATION CONFIRMATION:** Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☒ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☐ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

31. **AUTHORITY OF SIGNATORY:** If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

32. **ENTIRE AGREEMENT:** This Agreement, including any Addendums or exhibits, constitutes the entire Agreement between the parties and no warranties, including any warranty of habitability or representations have been made or shall be binding upon either party unless herein set forth.

33. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

BUYER'S Initials (AB) Date 8/14/07SELLER'S Initials (JG) Date 8/14/07

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RE-23 COMMERCIAL PURCHASE AND SALE AGREEMENT JULY, 2007 EDITION, PAGE 6 OF 7

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RE 23 PURCHASE & SALES AGREEMENT FOR COMMERCIAL REAL ESTATE, JULY, 2007 EDITION PAGE 7 OF 7

PROPERTY ADDRESS: 1675 Curlew

Arava

ID# 1992

34. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) August 13, 2007 at (Local Time) 6:00 ☐ A.M. ☒ P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

35. BUYER'S SIGNATURES:

☒ SEE ATTACHED BUYER'S ADDENDUM(S): 1 (Specify number of BUYER addendum(s) attached.)

BUYER Signature Thomas G. Arave, Trustee

BUYER (Print Name) _____

Date Aug 14, 07 Time 11:30 ☒ A.M. ☐ P.M.Phone # 510-848-0272 Cell # 510-502-0272Address 1390 Grandview Dr.

City _____ State _____ Zip _____

Berkeley, Ca 94705

Fax # 510-848-0273

E-Mail Address _____

blasket@pacbell.net

BUYER Signature _____

BUYER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

36. SELLER'S SIGNATURES: On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

☐ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

☐ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

SELLER Signature Gordon AraveSELLER (Print Name) Gordon AraveDate 8/14/07 Time 2:15 ☐ A.M. ☐ P.M.Phone # 208-785-3494 Cell # 208-785-2818Address 1395 NW MAINCity BLAINES State Id. Zip 83221

E-Mail Address _____

Fax # 208-785-3496

SELLER Signature _____

SELLER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____

BUYER'S Initials LA Date Aug 14, 2007SELLER'S Initials MA Date 8/14/07

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RE-23 COMMERCIAL PURCHASE AND SALE AGREEMENT JULY, 2007 EDITION PAGE 7 OF 7

Company: High Desert Realtors

S/N: PCF5-06353

Provided by: Paul Fife

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RE-11 ADDENDUM JULY, 2007 EDITION PAGE 1 OF 1



RE-11 ADDENDUM #1

(1,2,3, etc.)



Date: August 9, 2007

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

- 1 This is an ADDENDUM to the ☒ Purchase and Sale Agreement ☐ Other
 2 ("Addendum" means that the information below is added material for the agreement (such as facts or descriptions) and/or means the form is being used
 3 to change, correct or revise the agreement (such as modification, addition or deletion of a term)).
 4

AGREEMENT DATED: August 9, 2007

ID #1992

ADDRESS: 1675 Curlew

BUYER(S): O'Shea Family Trust and or Assigns

SELLER(S): High Mark Development LLC

The undersigned parties hereby agree as follows:

10 Seller to provide following: Indemnification to Buyer from losses, including reasonable
 11 attorney/appraisal fees, that Buyer may incur by having to sell the property to Tenant, should Tenant
 12 wish to purchase the property as provided for in the lease.
 13

14 Estoppels: Seller shall deliver to Buyer and estoppel for the Tenant 10 days prior to Closing.
 15

16 Should the information provided on the estoppel differ from the information provided by Seller, Buyer
 17 shall have the option to terminate the Agreement and receive full refund of Earnest Money. the form of
 18 Estoppel shall be attached to the Agreement.
 19

20 As-Built and Construction Drawings: Five (5) days prior to closing, Seller to deliver to Buyer copies
 21 of all as-built and construction drawings for base building and tenant improvement construction.
 22

23 Other Documents: Seller to utilize best efforts to deliver all property financial, operation, lease
 24 and construction documents to Buyer within thirty (30) days after closing, where feasible, Seller shall
 25 provide electronic copies of these materials as well.
 26

27 Buyer to approve warrant deed during inspection period.
 28
 29
 30
 31

32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
 33 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior
 34 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this
 35 agreement is made an integral part of the aforementioned Agreement.
 36

BUYER: Thomas O'Shea

Date: 8/14/2007

BUYER:

Date:

SELLER: Gordon Arave

Date: 8/14/07

SELLER:

Date:

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RE-11 ADDENDUM JULY, 2007 EDITION

PAGE 1 OF 1

Company: High Desert Realtors

S/N: PCRS-06353

Provided by: Paul Fife

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D R A F T

ADDENDUM TO ADDENDUM #1 TO PURCHASE AND SALE AGREEMENT

DATED AUGUST 14, 2007

INDEMNIFICATION OF BUYER

(a) Seller and its principal, Gordon Arave, in his individual capacity ("Indemnifying Party"), hereby indemnify, defend, and hold harmless Buyer and its successors and assigns, (collectively for the purposes of this paragraph, "Indemnified Party") from and against any and all liability, loss, damage, cost and expense, including, without limitation, reasonable attorneys' fees arising out of The Children's Center Inc.'s ("Lessee") attempt to exercise or enforce a purported option to purchase the Premises under a Lease Agreement dated June 26, 2006. Indemnifying Party's duty under this paragraph shall be triggered only upon Indemnified Party's receipt of a written offer to purchase the Premises from the Lessee after June 19, 2009 for a total purchase price of less than \$3,700,000 (the "Triggering Event").

(b) Upon the occurrence of the Triggering Event, the Indemnified Party shall promptly notify the Indemnifying Party of any attempt to exercise the purported option to which the foregoing indemnification applies and the Indemnifying Party shall undertake, at its own cost and expense, the defense thereof. The Indemnified Party may, at its option and expense, retain its own counsel, provided that such counsel fully cooperates with the Indemnifying Party's counsel. If the Indemnifying Party fails to promptly appoint competent and experienced counsel, the Indemnified Party may engage its own counsel in defense thereof, and the reasonable charges in connection therewith shall promptly be paid by the Indemnifying Party. If the Indemnified Party settles or compromises any such suit, claim or proceeding, the amount thereof shall be charged to the Indemnifying Party, provided that the Indemnifying Party's prior approval has been secured, which approval shall not be unreasonably withheld.

DATED this 17th day of September, 2007.

O'SHEA FAMILY TRUST (BUYER)

BY: _____

ITS: _____

HIGH MARK DEVELOPMENT, LLC (SELLER)

BY: Gordon AraveITS: MemberGordon Arave

Gordon Arave, individually

Addendum #2
To Purchase and Sale Agreement Dated August 14, 2007
(the "Agreement")

- 1) **Indemnification of Buyer** – The following replaces lines 11, 12 and 13 of Addendum 1 to the Agreement.
 - a. Seller and Gordon Arave, their assigns, successors and heirs ("Indemnifying Party") hereby indemnifies, defends, and holds harmless Buyer and its successors and assigns, (collectively for the purpose of this section herein, "Indemnified Party") from and against any and all liability, loss, damage, cost and expense, including, without limitation, reasonable attorneys' fees, mortgage penalties and appraisal fees arising out of The Children's Center Inc.'s ("Lessee") attempt to exercise or enforce a purported option to purchase the Premises under a Lease Agreement dated June 26, 2006. Indemnifying Party's duty under this paragraph shall be triggered only upon Indemnified Party's receipt of a written offer to purchase the Premises from the Lessee after June 19, 2009 for a total purchase price of less than \$3,700,000 (the "Triggering Event").
 - b. Upon the occurrence of the Triggering Event, the Indemnified Party shall promptly notify the Indemnifying Party of any attempt to exercise the purported option to which the foregoing indemnification applies and the Indemnifying Party shall undertake, at its own cost and expense, the defense thereof. The Indemnified Party may, at its option and expense, retain own counsel, provided that such counsel fully cooperates with the Indemnifying Party's counsel. If the Indemnifying Party fails to promptly appoint competent and experienced counsel, the Indemnified Party may engage its own counsel in defense thereof, and the reasonable charges in connection therewith shall promptly be paid by the Indemnifying Party. If the Indemnified Party settles any such suit, claim or proceeding, the amount thereof shall be charged to the Indemnifying Party, provided that the Indemnifying Party's prior approval has been secured, which approval shall not be unreasonably withheld.
- 2) **Inspection Period** – Buyer is removing all contingencies with the exception of the items listed below.
 - a. **Loan Assumption:** Buyer to be approved by Seller's lender (the "Lender") to assume current Note and Deed of Trust (the "Loan"). Lender to provide Buyer, for Buyer approval, a document stating the costs associated with assuming the Loan. Loan approval and Loan cost approval to occur at least 10 days prior to Closing. If Lender does not approve Buyer, or Lender costs are unsatisfactory to Buyer, Buyer may terminate this Agreement and receive a full refund of Earnest Money.

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Tom O'Shea

510 848-0273

P. 1

- b. **Building Inspection:** Buyer, at Buyer's sole cost, shall contract to obtain a site inspection report. The report shall be completed and approved by Buyer on or before September 21, 2007. Should the report be unsatisfactory to Buyer for any reason, Buyer may terminate this Agreement and receive a full refund of Earnest Money.
- c. **Tenant Estoppel:** Seller to provide Buyer a Tenant Estoppel in like form to the one provided to Buyer on August 24, 2007 by facsimile with the Tenant acknowledging that there will be a rent increase in years four and eight as using the CPI formula outlined in Section 17 of the Lease. In addition, Tenant to attach to the Estoppel a list of all sublease tenants. The Tenant Estoppel to be approved by Buyer on or before September 21, 2007. This date may be extended should Seller require more time to obtain the Tenant Estoppel. Buyer approval to occur no later than 10 days prior to Closing.
- 3) **Earnest Money** - Within 2 business days of Seller approving this Addendum #2, Buyer shall increase Earnest Money to \$100,000. Once the above inspection items are completed, the Earnest Money shall become non-refundable.
- 4) **Warranty Deed** - Per line item 27 of Addendum 1, Buyer still has to approve the Warranty Deed. This shall occur no later than 10 days prior to Closing. Should Buyer not approve the Warranty Deed, Buyer may terminate the Agreement and receive a full refund of Earnest Money.
- 5) **Closing Date** - Closing Date to be extended to November 16, 2007.

Buyer:

Thomas O'Shea (Gordon Arave)

Date:

Sept 6 07

Seller:

Gordon Arave
(High Mark Development LLC)

Date:

9/10/07

Gordon Arave:

Gordon Arave
(Gordon Arave)

Date:

9/10/07

Addendum #3
To Purchase and Sale Agreement Dated August 14, 2007
(the "Agreement")

- 1) **Indemnification of Buyer** – Both Buyer and Seller have accepted the language stipulated in Addendum #2 for the Indemnification of Buyer.
- 2) **Inspection Period** – Due to the timing stipulated in Addendum #2 of the Agreement, items a, b and c below have been updated to reflect the current status for removing these contingencies and now replace the corresponding items in Addendum #2.
 - a. **Loan Assumption:**
 - i. Buyer to be approved by Seller's lender (the "Lender") to assume current Note and Deed of Trust (the "Loan"). Loan approval to occur at least 10 days prior to Closing. If Lender does not approve Buyer, Buyer may terminate this Agreement and receive a full refund of Earnest Money.
 - ii. Buyer and Seller have agreed that Seller shall pay any all Lender costs, including Lender inspection and appraisal fees, if any that exceed 1% of the loan balance at Closing. Buyer agrees to pay any and all Lender fees up to 1% of the loan balance at Closing.
 - b. **Building Inspection:** Buyer has completed its inspection of the property. In order to remove all contingencies related to the building inspection, Buyer requires that Seller provide a list of all warranties for the property as stipulated on line item 141, page 3 of the Agreement. The warranty list shall include the responsible contractor, contact information and description of the warranty. Upon receipt of the warranties, Buyer shall have 2 business days from Buyers receipt to remove all contingencies related to the Building Inspection.
 - c. **Tenant Estoppel:** Buyer has reviewed the estoppel signed by Tenant on September 20, 2007 and does not approve the Estoppel. Attached as **Exhibit A** is a revised Estoppel that Buyer will approve when the Tenant has signed it. The Estoppel, signed by Tenant, must be received on or before October 9, 2007. Should Buyer not receive the signed Estoppel by this time, Buyer, at Buyer's sole discretion, may terminate this Agreement and receive a full refund of Earnest Money.
- 3) **Earnest Money** – Buyer has deposited \$100,000 in Earnest Money. Once the above inspection items are completed, the Earnest Money shall become non-refundable.
- 4) **Warranty Deed** – Per line item 27 of Addendum 1, Buyer still has to approve the Warranty Deed. This shall occur no later than 10 days prior to Closing. Should Buyer not approve the Warranty Deed, Buyer may terminate the Agreement and receive a full refund of Earnest Money.

5) Closing Date – Closing Date to remain as on or before November 16, 2007.

Buyer: Charles O Shea Date: Fri. Sept 17

Seller: _____ Date: _____
(High Mark Development LLC)

Gordon Arave: _____ Date: _____
(Gordon Arave)

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p.1

Addendum #3
 To Purchase and Sale Agreement Dated August 14, 2007
 (the "Agreement")

- 1) **Indemnification of Buyer** – Both Buyer and Seller have accepted the language stipulated in Addendum #2 for the Indemnification of Buyer.
- 2) **Inspection Period** – Due to the timing stipulated in Addendum #2 of the Agreement, items a, b and c below have been updated to reflect the current status for removing these contingencies and now replace the corresponding items in Addendum #2.
 - a. **Loan Assumption:**
 - i. Buyer to be approved by Seller's lender (the "Lender") to assume current Note and Deed of Trust (the "Loan"). Loan approval to occur at least 10 days prior to Closing. If Lender does not approve Buyer, Buyer may terminate this Agreement and receive a full refund of Earnest Money.
 - 9/24/07 *Y.D.* ii. ~~Buyer and Seller have agreed that Seller shall pay any all Lender costs, including Lender inspection and appraisal fees, if any that exceed 1% of the loan balance at Closing. Buyer agrees to pay any and all Lender fees up to 1% of the loan balance at Closing.~~ *assumption*
 - b. **Building Inspection:** Buyer has completed its inspection of the property. In order to remove all contingencies related to the building inspection, Buyer requires that Seller provide a list of all warranties for the property as stipulated on line item 141, page 3 of the Agreement. The warranty list shall include the responsible contractor, contact information and description of the warranty. Upon receipt of the warranties, Buyer shall have 2 business days from Buyers receipt to remove all contingencies related to the Building Inspection.
 - c. **Tenant Estoppel:** Buyer has reviewed the estoppel signed by Tenant on September 20, 2007 and does not approve the Estoppel. Attached as Exhibit A is a revised Estoppel that Buyer will approve when the Tenant has signed it. The Estoppel, signed by Tenant, must be received on or before October 9, 2007. Should Buyer not receive the signed Estoppel by this time, Buyer, at Buyer's sole discretion, may terminate this Agreement and receive a full refund of Earnest Money.
- 3) **Earnest Money** – Buyer has deposited \$100,000 in Earnest Money. Once the above inspection items are completed, the Earnest Money shall become non-refundable.
- 4) **Warranty Deed** – Per line item 27 of Addendum 1, Buyer still has to approve the Warranty Deed. This shall occur no later than 10 days prior to Closing. Should Buyer not approve the Warranty Deed, Buyer may terminate the Agreement and receive a full refund of Earnest Money.

10/24/2007 WED 10:15 FAX 208 785 3496 Arave Const/Western Real

2002/003

Addendum #4

To Purchase and Sale Agreement Dated August 14, 2007
(the "Agreement")

- 1) **Indemnification of Buyer** – Tenant has agreed to redact and release its option to purchase the Property stated in Recital B of the Lease. Upon Buyer's receipt of a signed amendment to the Lease confirming this, Buyer shall release Seller from this indemnification.
- 2) **Inspection Period** – Due to the timing stipulated in Addendum #3 of the Agreement, items a, b and c below have been updated to reflect the current status for removing these contingencies and now replace the corresponding items in Addendum #3.
 - a. **Loan Assumption:**
 - i. Buyer to be approved by Seller's lender (the "Lender") to assume current Note and Deed of Trust (the "Loan"). Loan approval to occur at least 10 days prior to Closing. Should Lender require additional time to approve Buyer or to complete assumption documents, Seller agrees to extend Closing to accommodate Lender assumption timeline. If Lender does not approve Buyer, Buyer may terminate this Agreement and receive a full refund of Earnest Money.
 - ii. Same as in Addendum #3.
 - b. **Building Inspection:** Buyer has completed its inspection of the property noting several minor items for repair. Seller has agreed to make the repairs at Seller's cost prior to Closing. Should the repairs not be completed by Closing, Seller agrees to leave \$5,000 in escrow until repairs are completed. If repairs are not completed within 30 days of Closing, Buyer shall receive the \$5,000 from escrow and make repairs itself. Other than these repair items, Buyer removes Building Inspection contingency.
 - c. **Tenant Estoppel:** Buyer accepts the estoppel signed by Tenant on October 17, 2007.
- 3) **Earnest Money** – Buyer has deposited \$100,000 in Earnest Money. Once Item 2) a. above is completed the Earnest Money shall become non-refundable.
- 4) **Warranty Deed** – Same as Addendum #3.
- 5) **Closing Date** – Closing Date to remain as on or before November 16, 2007 unless Lender require additional time for assumption process.

Buyer:

Thomas O'Shea

Date:

Oct 26 07.

Seller:

Gordon O'Shea
(High Mark Development LLC)

Date:

10/29/07

Gordon Arave: *Gordon Arave*
(Gordon Arave)

Date: 10/24/07

RE-11 ADDENDUM JULY, 2007 EDITION PAGE 1 OF 1



RE-11 ADDENDUM # 5

(1,2,3, etc.)



Date: December 5, 2007

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an **ADDENDUM** to the ☒ Purchase and Sale Agreement☐ Other

("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is to be changed, correct or revise the agreement (such as modification, addition or deletion of a term)).

AGREEMENT DATED: August 9, 2007

ID #1992

ADDRESS: 1675 Curlew

BUYER(S): O'Shea Family Trust

SELLER(S): High Mark Development LLC

The undersigned parties hereby agree as follows:

Closing date to be on or before December 12, 2007

Title Company responsible for closing will be changed to Idaho Title and Trust located in Idaho Falls

All other terms and conditions to remain the same.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties agreement is made an integral part of the aforementioned Agreement.

BUYER:

Date:

Dec 5 07

BUYER:

Date:

Dec 5 07

SELLER:

Date:

SELLER:

Date:

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RE-11 ADDENDUM JULY, 2007 EDITION

PAGE 1 OF 1



RE-11 ADDENDUM # 5

(1,2,3, etc.)



Date: December 5, 2007

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is an **ADDENDUM** to the ☒ Purchase and Sale Agreement ☐ Other
 2 ("Addendum" means that the information below is added material for the agreement {such as lists or descriptions} and/or means the form is being used
 3 to change, correct or revise the agreement {such as modification, addition or deletion of a term}).
 4

5 **AGREEMENT DATED:** August 9, 2007

ID #1992

6 **ADDRESS:** 1675 Curlew7 **BUYER(S):** O'Shea Family Trust8 **SELLER(S):** High Mark Development LLC

9 The undersigned parties hereby agree as follows:

10 Closing date to be on or before December 12, 2007

11 Title Company responsible for closing will be changed to Idaho Title and Trust located in Idaho Falls.

12 All other terms and conditions to remain the same.

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32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior

33 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior

34 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this

35 agreement is made an integral part of the aforementioned Agreement.

36

37 **BUYER:**

Date:

38 **BUYER:**

Date:

39 **SELLER:** High Mark Dev. LLC

Date: 12-5-07

40 **SELLER:** Gordon Brown

Date:

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RE-11 ADDENDUM JULY, 2007 EDITION

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Company: High Desert Realtors

Provided by: Paul Fife

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S/N: PCF5-06353

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LEASE ESTOPPEL CERTIFICATE

October 17, 2007

This is to certify to the O'Shea Family Trust and its assignees ("Purchaser"), any successor or assignee of Purchaser, Standard Insurance Company, and any successor or assignee of the foregoing that:

1. The undersigned is the Lessee ("Tenant") under that certain Lease ("Lease") dated June 19, 2006 by and between High Mark Development, LLC, an Idaho limited liability company, as Landlord ("Landlord"), and The Children's Center, Inc., an Idaho corporation, as Tenant, covering those certain premises containing approximately 20,000 net rentable square feet, commonly known as 1676 Curlew Drive, Ammon, Bonneville County, State of Idaho, and including the right to use of certain common areas for parking, and ingress and egress ("Premises or Property").

A true, complete, and accurate copy of the Lease and all amendments thereto are attached hereto as Exhibit 1. The term of the Lease commenced on June 19, 2006, and terminates on June 19, 2016 and is renewable at the option of Tenant for an additional ten (10) year term.

2. The Lease is in full force and effect and has not been assigned, modified, supplemented, altered or amended in any respect (except as indicated following this sentence) and is the only lease or agreement between the undersigned and Landlord affecting the Premises. If none, state "none".

The Lease was amended on October 17, 2007 by redacting and releasing the option to purchase stated in Recital B of the Lease. As a result of this amendment, Recital B of the Lease, in its entirety, reads as follows: "Lessee agrees to lease from Lessor the usable area of 20,000 sq. ft." See Exhibit 1 hereto.

3. The undersigned has accepted possession and now occupies the Premises and full rent is accruing under the Lease. The improvements, if any required to be furnished under the Lease, have been completed and accepted by Tenant. Any required payments, allowances or contributions from Landlord to Tenant have been paid in full or credited in full to Tenant.

4. As of the date hereof, Landlord is not in default in the performance of its obligations under the Lease. Tenant is not aware of the existence of any condition which, with the giving of notice, the passage of time, or both, would constitute a default under the Lease on the part of Tenant or Landlord. Tenant acknowledges that it is aware of its obligations under the Lease as a "Triple Net Lease" to reimburse Landlord for all costs associated with the use of the building, which currently total \$4,000 per month. Included in this \$4,000 is a property management fee of approximately \$500 per month, insurance costs totaling approximately \$400 per month, plus all real property taxes, lawn care, and snow removal. Tenant acknowledges that Landlord's sole responsibility is to replace the roof and foundations if needed. Tenant acknowledges that it carries public liability insurance with respect to the

business operated by Tenant in which the combined single limit is not less than \$1,000,000 per accident or incident.

5. All minimum monthly rent has been paid to the end of the current calendar month, which is September 2007, and no rent under the Lease has been paid more than one month in advance of its due date. The current minimum monthly rent is \$24,987.50. The Lease provides for potential rental increases in 2010 and 2014. Tenant currently occupies the Premises, which totals approximately 20,000 square feet.

6. Tenant has no right or option to terminate or cancel the Lease, except as follows: If none, state "none."

None.

7. The undersigned is not in default under the Lease and is current in the payment of any taxes, utilities, or other charges required to be paid by the undersigned. Tenant has no present right to any offsets, credits or deductions against rent payable under the Lease, and Tenant knows of no existing defenses against the enforcement of the Lease by Landlord. Tenant disclaims any and all right, title and interest to the Premises or Property except those rights granted under the Lease. This estoppel certificate supersedes any prior estoppels provided to Landlord.

8. Tenant has not entered into any sublease, assignment or other agreement transferring any of its interest in the Lease or the Premises other than as set forth herein.

9. The amount of the security deposit presently held under the Lease is \$0.

10. No actions, whether voluntary or otherwise, are pending against the undersigned under the bankruptcy laws of the United States or any state thereof.

This certification is made with the knowledge that it will be relied upon by Purchaser, Purchaser's lender and any successor or assignee of Purchaser's right to purchase the Property in connection with financing and sales of the Property and the purchase of the Property by Purchaser.

THE REMAINING PORTION OF THIS PAGE
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THU/OCT/18/2007 01:40 PM THE CHILDRENS CENTER

FAX No. 5291627

P. 002

EXECUTED under seal this TH 18 day of October, 2007.

TENANT:

THE CHILDREN'S CENTER, INC., an Idaho corporation

Matthew F. Smith

By: MATTHEW F. SMITH
Its: PRESIDENT

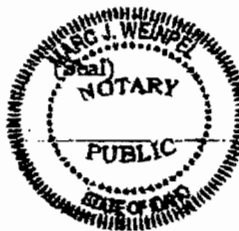
STATE OF IDAHO)

COUNTY OF BONNEVILLE)

On 10/18/2007 before me, MARC J. WEINPEL, personally appeared MATTHEW F. SMITH personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Marc J. Weinpel
NOTARY PUBLIC



My Commission Expires:

06/16/2011

10/24/2007 WED 10:04 FAX 208-3496 Arave Const/Western Real

002/005

TUE/OCT/23/2007 12:51 PM THE CHILDRENS CENTER FAX No. 5291627

P. 002

WOOD CRAPO LLC

ATTORNEYS AT LAW

500 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UTAH 84111TELEPHONE (801) 366-6060
FACSIMILE (801) 366-6061MARY ANNE Q. WOOD
DAVID J. CRAPO
LARRY S. JENNINGS
DARRELL J. LEE
KATHRYN OGDEN BALMFORTE
RICHARD J. ARMSTRONG
LANCE D. RICH
LARRY T. SMITH
RACHEL A. ASBURYPAMELA B. HUNSAKER
JOI GARDNER PEARSON
STEPHEN G. WOOD
OF COUNSEL

October 18, 2007

*Via E-mail and Fax*Marc J. Weinpel, Esq.
The Children's Center, Inc.
1675 Curlew Drive
Idaho Falls, Idaho 83406
E-mail: mweinpel@thechildrenscenter.us
Facsimile: 208-529-1627

Dear Mr. [redacted]:

Pursuant to our discussions this morning, I am forwarding this letter to you to memorialize the agreement between our respective clients, High Mark Development, LLC (hereinafter referred to as "Landlord") and The Children's Center, Inc. (hereinafter referred to as "Tenant"), as well as the other individuals and entities subject to the agreement we reached.

AGREEMENT

The parties agree as follows:

1. Jared Arave and Gordon Arave agree to release Tenant from the promissory note dated April 18, 2007 in the amount of \$199,900.00.
2. Tenant agrees to immediately sign the estoppel certificate dated October 17, 2007.
3. Tenant agrees to release any and all interests it has to two options to purchase set forth in two lease agreements. One agreement is with Landlord and relates to the Idaho Falls building, and the other agreement is with Crestwood Enterprises, LLC, and relates to the Pocatello building.
4. M. Smith Enterprises, LLC agrees to sign a promissory note amending the October 1, 2005 promissory note between Landlord and M. Smith Enterprises, LLC, agreeing to pay the note on an amortized payment schedule.

EXHIBIT

E

135

10/23/2007 TUE 13:10 [JOB NO. 9701] 002

10/24/2007 WED 9:59 [JOB NO. 9711] 002

10/24/2007 WED 10:05 FAX 206 35 3496 Arave Const/Western Real

003/005

TUE/OCT/23/2007 12:52 PM THE CHILDRENS CENTER

FAX No. 5291627

P. 003

Marc J. Weinpel, Esq.
October 18, 2007
Page 2

5. All parties to this letter agreement acknowledge and agree that this Agreement is contingent upon the closing of the sale of the Idaho Falls building on or about November 16, 2007. If the sale is not closed on or about November 16, 2007, this Agreement will terminate and the parties returned to the *status quo* that existed immediately prior to the execution of this Agreement.

If we are in agreement, please have your client sign at the appropriate spaces, and forward me a copy of the signature page for my records.

Thank you for your work on this.

Sincerely,

WOOD CRAPO LLC

Richard J. Armstrong

AGREED AND ACCEPTED this 18th day of October, 2007.

HIGH MARK DEVELOPMENT, LLC

By: Gordon Arave
Its: manager/owner

Gordon Arave
Gordon Arave
Jared Arave
Jared Arave

THE CHILDREN'S CENTER, INC.

By: Matthew F. Smith
Its: President

M. SMITH ENTERPRISES, LLC

By: Matthew F. Smith
Its: President

EXHIBIT A

PROMISSORY NOTE

\$100,000.00

Blackfoot, Idaho

June 1, 2005

For Value received, the undersigned promises to pay to the order of **Gordon Arave**.

At such place as the holder may designate in writing, **THE PRINCIPAL SUM OF \$100,000.00** together with interest beginning on 6/1/2005 at the rate of 10 percent per annum, lawful money of the United States of America in installments as follows:

Payments due monthly for interest only on the first of each month thereafter for a period of 59 months with a balloon payment of \$100,833.33 June 1, 2010. Monthly payments due on the first will be for the amount of **\$833.33**.

Further provided that there shall be no penalty for prepayments.

If default were made in the payment of any installment under this note, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this note. The failure of the holder of this note to enforce its rights upon default in any of the terms of this note shall not constitute a waiver of any such right in the event of a subsequent default. If suit is instituted to collect this note or any portion thereof, I agree to pay, in addition to the costs and disbursements as are allowed by law, such additional sums as the court may adjudge reasonable on attorney's fees in such suit. The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, protest, and notice of protest and of non-payment of this notice.

The indebtedness evidenced by this Note is secured by a Deed of Trust of even date, and reference is made to the Deed of Trust for rights as to acceleration of the indebtedness evidenced by this note.

Due: 6/1/2010



M. Smith Enterprises LLC
Matt Smith, Manager

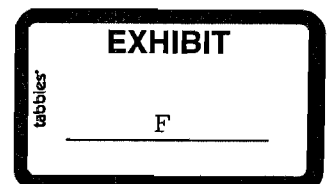


EXHIBIT **B****PROMISSORY NOTE****\$100,000.00****Blackfoot, Idaho****October 1, 2005**

For Value received, the undersigned promises to pay to the order of **Gordon Arave**.

At such place as the holder may designate in writing, **THE PRINCIPAL SUM OF \$100,000.00** together with interest beginning on **6/1/2005** at the rate of 10 percent per annum, lawful money of the United States of America in installments as follows:

Payments due monthly for interest only on the first of each month thereafter for a period of 59 months with a balloon payment of \$100,833.33 Oct. 1, 2010. Monthly payments due on the first will be for the amount of \$833.33.

Further provided that there shall be no penalty for prepayments.

If default were made in the payment of any installment under this note, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this note. The failure of the holder of this note to enforce its rights upon default in any of the terms of this note shall not constitute a waiver of any such right in the event of a subsequent default. If suit is instituted to collect this note or any portion thereof, I agree to pay, in addition to the costs and disbursements as are allowed by law, such additional sums as the court may adjudge reasonable on attorney's fees in such suit. The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, protest, and notice of protest and of non-payment of this notice.

The indebtedness evidenced by this Note is secured by a Deed of Trust of even date, and reference is made to the Deed of Trust for rights as to acceleration of the indebtedness evidenced by this note.

Due: 10/1/2010



M. Smith Enterprises LLC
Matt Smith, Manager

Promissory Note**Page 1 – \$199,900.00****1. Initial information****Date of Note:** April 18, 2007,**Maturity Date:** May 3, 2014.**Principal Sum:** \$199,900.00**Annual Interest Rate:** 6.75% per annum

Monthly Payments: Debtor shall make 84 equal monthly payments of \$2,992.65 to Creditor. The first monthly payment shall be due on May 3, 2007. A like monthly payment shall be made on the 1st day of each month thereafter to Lender. The entire principal and interest shall be paid in full no later than May 3, 2014.

Made at: Idaho Falls, Idaho**Debtor/Borrower:** The Children's Center Inc. of Idaho Falls, Idaho**Creditor/Lender/Holder:** Jared Arave & Gordon Arave of Blackfoot, Idaho.**2. Background**

Lender and Borrower have entered into a loan Agreement dated April 18, 2007. Lender has agreed to lend to Borrower \$149,925.00, by means of rent deferral for the months of September, 2006 thru January, 2007. Borrower has received \$149,925.00, by means of rent deferral, and additional cash to the sum of \$49,975.00, and gives Lender this Promissory Note in exchange. By signing this promissory note Lender agrees that all past promissory notes and debt for deferred rent payments owed by Borrower to High Mark Development, LLC, Gordon Arave, or any entity in which Gordon Arave has an interest in, is cancelled and replaced by this promissory note.

3. Borrower's promise to repay

In return for the consideration of the transfer of the funds to the Corporation, Borrower promise to pay to order of Lender the Principal Sum plus interest in money of the United States of America. Lender may transfer this note; and Lender or anyone to whom this note is transferred is called the "holder."

4. Interest

Interest will be charged on the unpaid Principal Sum at the annual interest rate of 6.75% until the full amount of the principal has been paid. The interest will accrue daily and start on the Date of Note. The Annual Interest Rate required by this section is the rate before default. If there is a default, then the Default Interest Rate will apply from the date of the default until the default is cured. The Default Interest Rate is 8% per annum.

5. Payments

Beginning on May 3, 2007 and on the 1st day of the month for each following month until May 3, 2014, Borrower will make Monthly principal and interest payments as described in section 1. On May 3, 2014, Borrower will pay all amounts still owing under this note. Borrower may make a full prepayment without penalty prior to May 3, 2014. All payments whenever made will be applied in the following order: 1) interest, and 2) principal. If Borrower makes a prepayment, that will not excuse Borrower from making any other payments due under this note.

Page 2 – \$199,900.00

Borrower will make all payments to Lender's address specified above, or at a different place if required by the Lender or holder.

6. Borrower's failure to repay**Default**

Borrower will be in default if:

Borrower does not make any payments under this note when due; Borrower (a) makes an assignment for the benefit of creditors, (b) files a petition in bankruptcy, (c) is adjudicated insolvent or bankrupt under the federal bankruptcy code as now or later in effect, or under any applicable state insolvency law; or if there is started against Borrower any bankruptcy, insolvency or other similar proceeding which has not been dismissed by the 60th day after the date on which the proceeding was started, or Borrower consents to or approves of any such proceeding or the appointment of any receiver for us or any substantial part of Borrower's property, or the appointment of any such receiver is not discharged within 60 days.

Acceleration

If Borrower is in default, the holder may send Borrower a written notice stating that if Borrower does not pay the overdue amount by a certain date, the holder may require Borrower to pay immediately the full amount of unpaid principal and all the accrued interest. That date must be at least sixty days after the date on which the notice is delivered or mailed.

Preservation of holder's rights

After default, even if the holder does not require Borrower to pay immediately the full amount of unpaid principal and all of the interest on the note, the holder will still have the right to do so if Borrower remains in default.

Payment of holder's costs and expenses

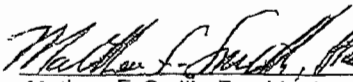
If Borrower is in default, the holder will have the right to be repaid by Borrower for all of its costs and expenses in enforcing this note to the extent not prohibited by applicable law. Those expenses include, but are not limited to, reasonable attorney's fees.

7. Giving the notices

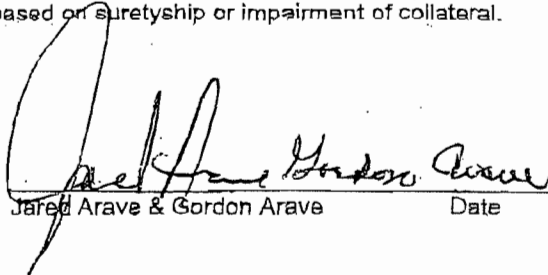
Unless applicable law requires a different method, any notice that must be given to Borrower under this note will be given by delivering it or by mailing it by first class mail to Borrower at the address shown at the beginning of this note, or at a different address if Borrower gives the holder a notice of its different address using the procedure in the next paragraph. Any notice that must be given to the holder under this note (such as, for example, a notice of different address) will be given by mailing it by first class mail to the holder at the address stated in section 1 above, or at a different address if Borrower is given a notice of that different address using the procedure in the paragraph immediately above.

8. Waivers

Borrower and any other person who has obligations under this note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the holder to demand payment of amounts due. "Notice of dishonor" means the right to require the holder to give notice to other persons that amounts due have not been paid. Borrower waives defenses based on suretyship or impairment of collateral.


Mathew F. Smith, President Date 4/18/07

The Children's Center Inc.


Jared Arave & Gordon Arave Date 4/18/07

Marc J Weinpel

From: Rick J. Armstrong [rjarmstrong@woodcrapo.com]
Sent: Wednesday, November 07, 2007 4:43 PM
To: Marc J Weinpel
Cc: westernrealty@hotmail.com
Subject: Rent Obligation--Confidential and Privileged Settlement Negotiations pursuant to Idaho R. Evid. 408
Attachments: hm note.11.07.07.pdf

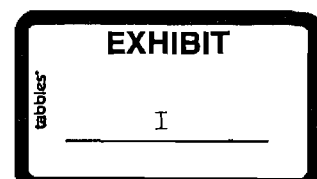
Marc:

I have left you voice mail and e-mail requesting information as to when the October and November 2007 rent and CAM charges for the Idaho Falls building will be paid in full. I have not heard anything from you on this. I am assuming that you may be out of the office and are therefore unable to communicate with me. My client has asked me to contact you to discuss the option of satisfying the Center's rent obligation for October and November 2007 on the Idaho Falls property only through issuance of a promissory note. I have taken the liberty of drafting a note to this effect and have attached it for your review and comment. Understand that the note would only defer rent payments for October and November 2007 on the Idaho Falls building, and that the Center is still required to make timely non-deferred payments for December 2007 going forward, as well as remain current in its rent obligations on the Pocatello building. Moreover, Mr. Smith's LLC is still required to make timely payments under the other outstanding note to Mr. Arave. Also, the attached note as proposed requires the first payment be made on December 1, 2007. If your client is in agreement, please contact me so that I can forward to you a signature copy of the note. It is critical that we get this situation resolved, so please put this at the top of your and Mr. Smith's list.

Thank you,

Richard J. Armstrong, Esq.
 WOOD CRAPO LLC
 500 Eagle Gate Tower
 60 East South Temple
 Salt Lake City, Utah 84111
 Tel: (801) 366-6060
 Fax: (801) 366-6061
rjarmstrong@woodcrapo.com

CONFIDENTIALITY NOTICE: This message is from the law firm **Wood Crapo, LLC**. This message and any attachments may contain legally privileged or confidential information, and are intended only for the individual or entity identified above as the addressee. If you are not the addressee, or if this message has been addressed to you in error, you are not authorized to read, copy, or distribute this message and any attachments, and we ask that you please delete this message and attachments (including all copies) and notify the sender by return e-mail or by phone at 801-366-6060. Delivery of this message and any attachments to any person other than the intended recipient(s) is not intended in any way to waive confidentiality or a privilege. All personal messages express views only of the sender, which are not to be attributed to **Wood Crapo, LLC**, and may not be copied or distributed without this statement.



PROMISSORY NOTE

Principal Amount: \$57,975.00

Date of Note: November 7, 2007

FOR VALUE RECEIVED, THE CHILDREN'S CENTER, INC. (hereinafter "Debtor"), promises to pay to the order of HIGH MARK DEVELOPMENT, LLC ("Payee"), at the address set forth below or at such other place as Payee shall have designated to Debtor in writing, the principal sum of Fifty Seven Thousand Nine Hundred Seventy Five Dollars and Zero Cents (\$57,975.00). Interest shall accrue on such principal sum at the rate of ten percent (10%) per annum until paid.

This Note shall be paid as follows: Payments are due monthly for principal and interest in the amount of \$2,657.19 beginning December 1, 2007 for a period of 24 months, with payments due on the first of each month until paid.

All payments received under this Note shall be made in the form of lawful money of the United States of America.

This Note may be prepaid by Debtor, in whole or in part, without premium or penalty. All prepayments shall first be applied to accrued interest and then to the unpaid principal balance hereof.

In the event of (a) any default in the payment of any principal or interest due under this Note when due and payable, or (b) Debtor files a petition or any proceeding is commenced by or against Debtor for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of Debtor, readjustment of indebtedness, reorganizations, composition or extensions, or Debtor becomes insolvent, then, and in any of such events, the whole principal sum of this Note shall, at the option of the holder of this Note, become immediately due and payable without notice or demand, and the holder of this Note shall have and may exercise any and all of the rights and remedies provided herein or at law. Interest shall run on any amount in default under this Note at the rate of eighteen percent (18%) per annum.

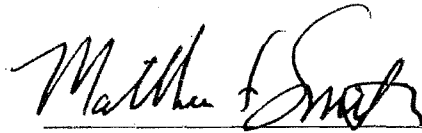
If Payee retains an attorney for collection of this Note, or if any suit or proceeding is brought for the recovery or protection of all or any part of the indebtedness evidenced by this Note, then Debtor agrees to pay on demand all costs and expenses of the suit or proceeding, or any appeal thereof, incurred by Payee, including, without limitation, reasonable attorney fees. If Payee retains the services of a collection agency to collect any amount in default, Debtor agrees to pay reasonable collection costs, plus any reasonable attorney fees incurred by Payee.

Debtor waives presentment, notice of dishonor, notice of acceleration and protest, and assents to any extension of time with respect to any payment due under this Note and to the addition or

release of any party. No waiver of any payment or other right under this Note shall operate as a waiver of any other payment or right.

This Note shall be governed by and construed pursuant to the laws of the State of Idaho.

THE CHILDREN'S CENTER, INC.

A handwritten signature in black ink, appearing to read "Matt Smith", is written over a horizontal line.

By: Matt Smith

Its: Chief Executive Officer

Address of Payee:

High Mark Development, LLC
3494 NW Main Street
Blackfoot, Idaho 83221